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SUPREME COURT, U. S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1963

No. 23

B. A. REYNOLDS, ETC., ET AL., APPELLANTS,

vs.

M. O. SIMS, ET AL.

No. 27

DAVID J. VANN AND ROBERT S. VANCE, APPELLANTS,

vs.

BETTYE FRINK, SECRETARY OF STATE OF THE STATE OF ALABAMA, ET AL.

No. 41

JOHN W. McCONNELL, JR., ET AL., APPELLANTS,

vs.

BETTYE FRINK, SECRETARY OF STATE OF ALABAMA, ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA

NO. 23 FILED OCTOBER 12, 1962
NO. 27 FILED OCTOBER 19, 1962
NO. 41 FILED NOVEMBER 23, 1962

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[fol. 29] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
(NORTHERN DIVISION)
Civil Action No. 1744-M

M. O. SIMS, FRED A. BEAM, WYLIE JOHNSON, G. R. SOUTHARD, MILES S. LEE, PAUL FRIEDMAN, WM. LINDSAY WILLIAMS, WILLIAM P. SHAW, JR., PRENTICE W. THOMAS, RICHARD D. TANNEHILL, PAUL M. BYRNE, DAVID R. BAKER, CHARLES MORGAN, JR., and GEORGE PEACH TAYLOR, for themselves, jointly and severally, and for all others similarly situated, Plaintiffs,

vs.

BETTYE FRINK, Secretary of State of the State of Alabama; HARRELL HAMMONDS, Judge of Probate of Lowndes County, Alabama; JOHN A. SANKEY, Judge of Probate of Montgomery County, Alabama; J. PAUL MEEKS, Judge of Probate of Jefferson County, Alabama; C. O. VARDAMAN, Chairman of the Alabama State Republican Executive Committee; O. P. DRAKE, Secretary of the Alabama State Republican Executive Committee; SAM ENGLEHARDT, Chairman of the Alabama State Democratic Executive Committee; H. G. RAINS, Secretary of the Alabama State Democratic Executive Committee; MACDONALD GALLION, Attorney General of the State of Alabama; and their successors in each such office, Defendants.

AMENDED COMPLAINT—Filed August 26, 1961

Come the plaintiffs, M. O. Sims, Fred A. Beam, Wylie Johnson, G. R. Southard, Miles S. Lee, Paud Friedman, Wm. Lindsay Williams, William P. Shaw, Jr., Prentice W. Thomas, Richard D. Tannehill, Paul M. Byrne, David R. Baker, Charles Morgan, Jr., and George Peach Taylor,

who, in accordance with Rule 15 (a) of the Federal Rules of Civil Procedure, hereby amend the style of their complaint to read as aforesaid, and hereby amend their complaint to read as follows:
[fol. 30]

I

A. That this Court has original jurisdiction of this action, and that the plaintiffs have the right to bring this suit under the Civil Rights Act, 17 Stat. L. 13, and 16 Stat. L. 144; 42 U.S. Code, §§1983 and 1988, as follows:

"Section 1983. Civil action for deprivation of rights.

Every person who, under color or any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in any action at law, suit in equity or other proper proceeding for redress." (R.S. Sec. 1979)

"Section 1988. Proceedings in vindication of civil rights. The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, . . ." (R.S. Sec. 722)

B. Additionally, this Court has jurisdiction under 62 Stat. L. 932, 28 U.S. Code, §1343(3). This sections reads as follows:

"Section 1343. Civil rights.

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:—

• • • • • • •

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom, or usage, of any right, privilege or immunity secured by

the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."

II

That, under 62 Stat. L. 968; 28 U.S. Code, §2281 et seq., special provision is made for hearing causes of action involving restraining the enforcement, operation or execution of any state statute by restraining the action of any officer of such state whenever said application is based on the [fol. 31] unconstitutionality of such statute.

III

That each of the plaintiffs is a citizen of the United States and of the State of Alabama and of Jefferson County, and, as a taxpayer and a duly qualified and registered voter, in said State and County, is entitled to vote in primary, general and special elections for the members of the Legislature of the State of Alabama.

That the aforenamed plaintiffs jointly and severally bring this action on their own behalf and on behalf of all other voters in the State of Alabama, who are similarly situated.

IV

That the defendants are all citizens of the United States of America and of the State of Alabama, residing within the said State, in particular:

Defendant, Bettye Frink, is the duly elected, qualified and acting Secretary of State of the State of Alabama, with her office in the City of Montgomery, Montgomery County, in said State. The Secretary of State of the State of Alabama is a constitutional officer, a part of the executive branch of the government of the State (§112 of Article V of the Alabama Constitution of 1901), is the person to whom all returns of elections for members of the legislature must be made (Ibid, §193), and "shall perform such duties as may be prescribed by law" (Ibid, §137; See also §134).

Among other duties, the Secretary of State of the State of Alabama is charged by law to:

Keep papers belonging to the legislature (Title 32, §§7, 10 and 29, Alabama Code of 1940, as amended) and engrossed copies of laws and joint resolutions (Ibid, §8); perform sundry duties, including the performance of ". . . such other duties as he is or may be required by law to perform" (Title 55, §182, Alabama Code of 1940, as amended); see also Ibid, §§183-204; receive and preserve packages of ballots as well as written requests therefor [fol. 32] from those appointed to decide election contests (Title 17, §64(28), Alabama Code of 1940, as amended); receive certificates of nomination by political parties as well as petitions of electors to nominate independent candidates and to certify the names of such nominees to the various judges of probate (Ibid, §145); receive returns of election and to be present for the opening and counting of those so received, the governor or attorney general also to be present thereat (Ibid, §201); furnish certificates of election to members of the legislature (Ibid, §205); furnish blank certificates of the results of elections for members of the legislature and receive same back when filled out (Ibid, §209); perform duties required for general elections in special elections (Ibid, §221); receive the names of members of a committee to receive, expend, audit and disburse campaign contributions (Ibid, §274); receive the certification of candidates for nomination to the legislature and certify same to the probate judges (Title 17, §344, Alabama Code of 1940, as amended); receive notice of the entering of a primary election by the state executive committee or other governing authority of a political party (Ibid, §346); receive certification from the chairman of the state executive committee of a political party as to the names of nominees not having a majority, but running first and second in the first primary election and, in turn certifying those names to the various probate judges whose counties are affected thereby (Ibid, §366); certify to the probate judge lists of the nominees of political parties (Ibid, §369); notify probate judges of the results of election contests before the state executive committee of a political party (Ibid, §387).

Defendants, Harrell Hammonds, John A. Sankey and J. Paul Meeks are the duly elected, qualified and acting Probate Judges of Lowndes, Montgomery and Jefferson Counties, respectively. Judges of Probate of the State of Alabama are constitutional officers and are a part of the judicial branch of government (§139 of Article VI of the Alabama Constitution of 1901). A judge of probate has [fol. 33] authority "to exercise such other powers as are, or may be, conferred on him by law" (Title 13, §297, Alabama Code of 1940, as amended; see also Ibid, §§271-312). Among other duties of probate judges they are charged by law to:

Cause to be delivered to each polling place alphabetical lists of those who have paid their poll tax and those who are registered to vote thereat (Title 17, §138, Alabama Code of 1940, as amended); receive and preserve for a time, one copy of the certificate of results of an election (Ibid, §139); receive certification of nominations by political parties for state legislative offices as well as certification of those independent candidates properly nominated therefor by petitions of electors and he causes the names of such nominees to be printed upon the ballots utilized in his county (Ibid, §145); receive from candidates not accepting their nominations notification to that effect (Ibid, §148); preserve all certificates and petitions for nomination for six months after the election (Ibid, §168); cause the printing of voter instruction cards (Ibid, §165); ballots, blank poll lists, certificates of results, oaths, and all other stationery and blank forms necessary to conduct the election and cause the foregoing to be properly distributed (Ibid, §186); assemble, with others, and make a correct statement of election results (Ibid, §199); receive the original public declaration of the results of an election of members of the house of representatives and to record same and provide certified copies thereof and to allow a copy thereof to be posted on the courthouse door (Ibid, §200); receive and forward to the secretary of state certificates setting forth the returns of election for members of the legislature (Ibid, §209); to perform duties required for general elections in special elections (Ibid, §221); receive the names of members of a

committee to receive, expend, audit and disburse campaign contributions (Ibid, §274) and receive from it detailed, itemized statements of expenditures made (Ibid, §278) with an affidavit of the candidate attached thereto (Ibid, §280); [fol. 34] prepare and distribute ballots for the primary elections (Ibid, §§344, 366); furnish to the officers of a primary election a copy of the official list of voters and other election supplies as well as envelopes (Ibid, §354); supply voters whose votes are challenged with certificates to the effect that such voters names are on official voters lists (Ibid, §355); allow his office to be utilized as the proper place for receipt of ballot boxes by the county chairman of a political party (Ibid, §363); receive from the secretary of state lists of the nominees of the political parties (Ibid, §369); furnish certified copies of the registration lists and lists of poll tax payers to the parties to an election contest (Ibid, §377); receive notification of the results of election contests before the state executive committee of a political party (Ibid, §387); accept expense accounts of candidates for the legislature (Ibid, §400).

Defendants, C. O. Vardaman and Sam Engelhardt are the duly elected, qualified and acting chairmen of the Alabama State Republican Executive Committee and of the Alabama State Democratic Executive Committee, respectively, residing in Jefferson and Montgomery Counties, respectively. Among other duties chairmen of the state executive committee of a political party in Alabama are charged by law to:

Certify an election not to come under the primary election law (Title 17, §336, Alabama Code of 1940, as amended); certify to the secretary of state the names of candidates for nomination to the legislature (Ibid, §344); receive declarations of candidacy and fees therefor from candidates for the legislature (Ibid, §348); receive a copy of certificates of results of elections from inspectors and clerks at each and every election district or precinct in the state (Ibid, §365); receive the tabulation of the first and second primary elections results from the county chairman of his [fol. 35] political party, accept the declination of a nomination for office by a candidate therefor, appoint a sub-

committee of the state executive committee to receive such returns, canvass and tabulate them, and certify to the secretary of state the results of such primary elections as well as the nominee victorious therein (Ibid, §366); decide who shall be the nominee in the event of a tie vote (Ibid, §367); receive statements of contests of nominations, notify contestees thereof (Ibid, §384), file statements with reference thereto in the office of the circuit clerk of the county of residence of the contestee (Ibid, §385); call a meeting of the state executive committee to hear the charges against the contestee or appoint a subcommittee therefor (Ibid, §386); administer oaths to witnesses and accept deposits sufficient to pay the cost of the summoning of them (Ibid, §390); appoint a commissioner to take testimony and accept deposits to pay therefor (Ibid, §391); summon witnesses (Ibid, §392) and to notify the secretary of state of the results of any such contest (Ibid, §387); appoint, when authorized and empowered by the state executive committee of a political party, subcommittees to look after, supervise and conduct primary elections and do any and all things which the state executive committee and the chairman thereof could do under the provisions of Chapter 2 of Title 17, Alabama Code of 1940, as amended (Ibid, §394).

Defendants O. P. Drake and H. G. Rains are the duly elected, qualified and acting secretaries of the Alabama State Republican Executive Committee and the Alabama State Democratic Executive Committee, respectively, and reside in Winston and Etowah counties, respectively. Among other duties, the secretary of the state executive committee of a political party in Alabama is charged by law with the duty of certifying an election by the political party not to come under the primary election law (Title 17, §366, Alabama Code of 1940, as amended).

[fol. 36] Defendant, MacDonald Gallion, is the duly elected, qualified and acting Attorney General of the State of Alabama, with his office in the City of Montgomery, Montgomery County, in said state. The attorney general of Alabama is a constitutional officer, a part of the executive branch of the government of that state (§112 of Article V of the Alabama Constitution of 1901), and "shall per-

form such duties as may be prescribed by law." (Ibid, §137). Among other duties of the attorney general of Alabama, he is charged by law to:

Appear in the courts of the United States when so required by the Governor, in writing (Title 55, §228, Alabama Code of 1940, as amended); institute and to prosecute all civil actions necessary to protect the rights of the state (Ibid, §229); advise probate judges (Ibid, §240); the secretary of state and other state departments (Ibid, §228) as to the law and a written opinion from him protects the state or county officer receiving it from liability for official acts performed in accordance therewith (Ibid, §241); direct and control all litigation concerning the interests of the state or a department thereof and (with the approval of the governor) to hire counsel therefor (Ibid, §[illegible]); be present, in company with the governor or secretary of state for the official canvass (the opening and counting) of all returns of elections required by law to be sent to the secretary of state (Title 17, §201, Alabama Code of 1940, as amended).

That this action is brought against the aforenamed defendants in their representative capacities, and that said judges of probate are sued individually and also as representatives of all of the judges of probate in the state of Alabama, such persons being so numerous as to make it impracticable to bring them all before the court; that there is a common question of law involved, namely, the constitutionality of Sections 1 and 2 of Title 32, Alabama Code of 1940, as amended and Sections 202 and 203 of Article 9 of the Alabama Constitution of 1901 and of the apportionment of the legislature of Alabama under the [fol. 37] aforementioned provisions of the Alabama Code and Constitution, that common relief is sought against all judges of probate in their official capacities their duties having been hereinbefore set forth.

V

That plaintiffs are now denied the right to equal suffrage in free and equal elections, which right is granted them by the Constitution of the State of Alabama, and the equal

protection of the laws, as guaranteed by both the Constitution of the State of Alabama and by the Fourteenth Amendment to the Constitution of the United States, and they bring this action on their own behalf and on behalf of all duly registered and qualified voters of Jefferson County, and further, on behalf of all duly registered and qualified voters of the State of Alabama who are similarly situated under the provisions of Title 28, U. S. C., Section 2201 for a declaration of their rights and a declaration of the validity or invalidity of the private or public acts or statutes which apportion the representatives and senators among the counties of the State of Alabama, and the apportionment thereunder, and for such injunctive relief as may be proper to assure them and all other voters of the State of Alabama free and equal suffrage, liberty, and property, and equal protection of the laws which are now and have been for many years denied them by the defendants and their predecessors in office who have complied with certain unconstitutional statutes, acts and practices, all of which are more particularly set forth herein.

VI

That Article 14, Section 1 of the United States Constitution provides, in part, as follows:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

[fol. 38] This provision of the Constitution of the United States contains a guarantee to the citizens of the right to vote in state elections and further guarantees them that their votes shall be equally effective with any other votes cast in said state elections.

VII

That the Constitution and laws of the State of Alabama and of the United States of America establish, define and

guarantee to these plaintiffs, as well as to all other voters of the State of Alabama, free and equal suffrage in free and equal elections.

(1) Section 2 of Article 1 of the Alabama Constitution of 1901 invests all political power in the people.

> That all political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit; and that, therefore, they have at all times an inalienable and indefeasible right to change their form of government in such manner as they may deem expedient.

(2) Section 177 of Article 7 of the Constitution of Alabama of 1901 defines qualified voters who are guaranteed the right to free and equal elections and suffrage.

> Every male citizen of this state who is a citizen of the United States, and every male resident of foreign birth, who, before the ratification of this constitution, shall have legally declared his intention to become a citizen of the United States, twenty-one years old or upwards, not laboring under any of the disabilities named in this article, and possessing the qualifications required by it, shall be an elector, and shall be entitled to vote at any election by the people; provided, that all foreigners who have legally declared their intention to become citizens of the United States, shall, if they fail to become citizens thereof at the time they are entitled to become such, cease to have the right to vote until they become such citizens.

(3) That the right of free and equal suffrage is further guaranteed by Section 33 of Article 1 of the Constitution of Alabama of 1901.

> The privilege of suffrage shall be protected by laws regulating elections, and prohibiting, under adequate penalties, all undue influences from power, bribery, tumult, or other improper conduct.

[fol. 39] (4) The time of holding said elections is established by Section 46 of Article 4 of the Constitution of Alabama of 1901.

> Senators and representatives shall be elected by the qualified electors on the first Tuesday after the first Monday unless the legislature shall change the time of holding elections and in every fourth year thereafter.

(5) That the right of free and equal suffrage is guaranteed by Section 25 of Article 1 of the Constitution of Alabama of 1901.

> That the citizens have a right, in a peaceable manner, to assemble together for the common good, and to apply to those invested with the power of government for redress of grievances or other purposes, by petition, address, or remonstrance.

(6) That the right of free and equal suffrage is further guaranteed by Section 36 of Article 1 of the Constitution of Alabama of 1901.

> That this enumeration of certain rights shall not impair or deny others retained by the people; and, to guard against any encroachments on the rights herein retained, we declare that everything in this Declaration of Rights is excepted out of the general powers of government, and shall forever remain inviolate.

(7) That the right of free and equal suffrage is further guaranteed by Section 43 of Article 3 of the Constitution of Alabama of 1901.

> In the government of this state, except in the instances in this Constitution hereinafter expressly directed or permitted, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end that it may be a government of laws and not of men.

(8) That the right of free and equal suffrage is further guaranteed by Section 12 of Title 17 of the Alabama Code of 1940, as amended.

> Qualification of elector to vote. Every citizen of this state who is a citizen of the United States and every resident of foreign birth, who, before the ratification [fol. 40] of the present Constitution of the state, shall have legally declared his or her intention to become a citizen of the United States, twenty-one years old or upwards, not laboring under any of the disabilities named in section 15 of this title, and who shall have resided in this state at least one year, in the county six months, and in the precinct or ward three months, immediately preceding the election at which he offers to vote, and who shall have been duly registered as an elector, and shall have paid, on or before the first day of February next preceding the date of the election at which he or she offers to vote, all poll taxes due from them for the next two preceding years, shall be an elector, and shall be entitled to vote at any election by the people.

(9) That the right of free and equal suffrage is further guaranteed by Section 156 of Title 17 of the Alabama Code of 1940, as amended.

> Secret ballot. Every voter in Alabama shall have the right to vote a secret ballot, and that ballot shall be kept secret and inviolate.

(10) The following Sections of the Alabama Constitution of 1901 prescribe the number of members of the Senate and House of Representatives of the Legislature of Alabama and the formula and method of apportioning the members of the Legislature among the Counties of the State:

> Section 50. The Legislature shall consist of not more than thirty-five Senators, and not more than one hundred and five members of the House of Representatives, to be apportioned among the several districts and counties as prescribed in this Constitution; pro-

vided that in addition to the above number of Representatives each new county hereafter created shall be entitled to one Representative.

Section 197. The whole number of Senators shall be not less than one-fourth, or more than one-third of the whole number of Representatives.

Section 198. The House of Representatives shall consist of not more than one hundred and five members unless new counties shall be created, in which event each new county shall be entitled to one representative. The members of the House of Representatives shall be apportioned by the Legislature among the several counties of the State, according to the number of inhabitants in them respectively, as ascertained by the decennial census of the United States, which appor- [fol. 41] tionment when made shall not be subject to alteration until the next session of the Legislature after the next decennial census of the United States shall have been taken.

Section 199. It shall be the duty of the Legislature at its first session after the taking of the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of Representatives, and apportion them among the several counties of the state, according to the number of inhabitants in them respectively; provided, that each county shall be entitled to at least one Representative.

Section 200. It shall be the duty of the Legislature at its first session after taking the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of Senators and to divide the State into as many Senatorial districts as there are Senators, which districts shall be as nearly equal to each other in the number of inhabitants as may be, and each shall be entitled to one Senator, and no more; and such districts when formed, shall not be changed until the next apportioning session of the Legislature,

after the next decennial census of the United States shall have been taken; provided, that counties created after the next preceding apportioning session of the Legislature may be attached to Senatorial districts. No county shall be divided between two districts, and no district shall be made up of two or more counties not contiguous to each other.

Section 201. Should any decennial census of the United States not be taken, or if when taken, the same, as to this State, be not full and satisfactory, the Legislature shall have power at its first session after the time shall have elapsed for the taking of said census, to provide for an enumeration of all the inhabitants of this State, upon which it shall be the duty of the Legislature to make the apportionment of Representatives and Senators as provided for in this article.

Section 284. . . . Representation in the Legislature shall be based upon population, and such basis of representation shall not be changed by constitutional amendment.

VIII

That the plaintiffs, as citizens of the United States and of the State of Alabama, have the right conferred by the Constitution of Alabama of 1901 to have the entire membership of the Alabama Legislature reapportioned and elected on the basis of the 1960 Federal Census.

[fol. 42] That the Constitution of Alabama of 1901 guarantees the rights of these plaintiffs and all other registered and qualified voters of the State of Alabama to equal suffrage in free and equal elections as established by said Constitution.

That the Alabama Legislature is forbidden by Sections 2, 22, 25, 33 and 36 of Article 1 and by Section 43 of Article 3 and by Section 279 of Article 16 of the Alabama Constitution of 1901 to deprive these plaintiffs and all other qualified voters of the State of Alabama of equal suffrage in free and equal elections.

Section 2. That all political power is inherent in the people, and all free governments are founded on their

authority, and instituted for their benefit; and that, therefore, they have at all times an inalienable and indefeasible right to change their form of government in such manner as they may deem expedient.

Section 22. That no ex post facto law, nor any law, impairing the obligations of contracts, or making any irrevocable or exclusive grants of special privileges or immunities, shall be passed by the legislature; and every grant or franchise, privilege, or immunity shall forever remain subject to revocation, alteration, or amendment.

Section 25. That the citizens have a right, in a peaceable manner, to assemble together for the common good, and to apply to those invested with the power of government for redress of grievances or other purposes, by petition, address, or remonstrance.

Section 33. The privilege of suffrage shall be protected by laws regulating elections, and prohibiting, under adequate penalties, all undue influences from power, bribery, tumult, or other improper conduct.

Section 36. That this enumeration of certain rights shall not impair or deny others retained by the people; and, to guard against any encroachments on the rights herein retained, we declare that everything in this Declaration of Rights is excepted out of the general powers of government, and shall forever remain inviolate.

Section 43. In the government of this state, except in the instances in this Constitution hereinafter expressly directed or permitted, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end that it may be a government of laws and not of men.

[fol. 43] Section 279. All members of the legislature, and all officers, executive and judicial, before they enter upon the execution of the duties of their respec-

tive offices, shall take the following oath or affirmation:

"I, ..., solemnly swear (or affirm, as the case may be) that I will support the constitution of the United States, and the constitution of the State of Alabama, so long as I continue a citizen thereof; and that I will faithfully and honestly discharge the duties of the office upon which I am about to enter, to the best of my ability. So help me God."

The oath may be administered by the presiding officer of either house of the legislature, or by any officer authorized by law to administer an oath.

IX

That the last actual apportionment of the senatorial and representative districts of the Legislature of Alabama was based on the 1900 Federal Census and was established by Sections 202 and 203 of Article 9 of the Constitution of Alabama of 1901. There have been six decennial Federal enumerations of the population of the State of Alabama since 1900, namely in the years 1910, 1920, 1930, 1940, 1950 and 1960. After no such decennial Federal Census has there been a determination that said census as to this State was not full and satisfactory nor has the State of Alabama provided for the enumeration of its residents after any such decennial Federal Census. All Alabama Legislatures after each such enumeration have been under a constitutional mandate (in accordance with their oaths of office to support the Constitution of the United States and the Constitution of Alabama of 1901, set forth in Section 279 of Article 16 of the Constitution of Alabama of 1901) to reapportion said senatorial and representative districts in accordance with the result of the latest available enumeration. Since the Federal Census of 1910, there have been numerous regular and special sessions of Alabama legislatures; however, each and every such legislature, including the present legislature up to the time of the filing of this complaint, has failed to reapportion the [fol. 44] number of members of the house of representa-

tives among the several counties of the State and has failed to reapportion the number of members of the senate of the State and to readjust and alter the boundaries of the several senatorial districts of the State.

That the provisions of Sections 1 and 2, Title 32, Code of Alabama of 1940, as amended, which became effective on May 31, 1941, and the continued apportionment of the Legislature of Alabama under the provisions of Sections 202 and 203 of Article 9 of the Constitution of Alabama of 1901 are unconstitutional.

That the provisions of said Sections 1 and 2 are in the exact language of Sections 1507 and 1508 of the Code of 1923, which sections are in the exact language of Sections 900 and 901 of the Code of 1907. The apportionment provided for in Sections 900 and 901 of the Code of 1907 is the same that was provided in Sections 202 and 203 of the Constitution of 1901, except in the following respects: Section 202 of the said Constitution provided for only 105 members of the house of representatives. In 1903, Houston County was created out of the counties of Henry, Dale and Geneva (Gen. Acts of Ala. (1903) p. 44). Under the provisions of Section 50 of the Constitution, the newly created county of Houston became entitled to one representative. Therefore, Section 900 of the Code of 1907 provided, in effect, that there should be 106 members of the house of representatives and that Houston County should be entitled to one representative. Section 901 of the Code of 1907 shows that the newly created county of Houston became a part of the thirty-fifth senatorial district, which, under the provisions of Section 203 of the Constitution, consisted only of Henry County.

That the population of the various counties of this state has changed during the years which have intervened since the Constitution of Alabama of 1901 was adopted, so that the representation as provided in Sections 1 and 2 of Title 32, Code of 1940, cannot be said to be on a population basis. [fol. 45] That these plaintiffs and all others similarly situated possess the inherent right to vote for members of the Alabama Legislature and to cast votes that are equally effective with the votes of every other citizen of said State, that said rights are both recognized and guaranteed by the

Constitution of the United States and the Constitution of Alabama of 1901, but that, because of population changes since 1900 (as shown by Exhibits A and B which are attached hereto and by such attachment hereto and reference thereto are thereby made a part hereof) and the failure of the Legislature to reapportion itself since 1901, the plaintiffs' votes are not as effective as the votes of the voters residing in rural senatorial and representative districts in the State of Alabama. The population of the State of Alabama in 1900, based on the Federal Census of that year, was 1,828,687, while the population in 1960, based on the Federal Census of that year was 3,266,740, and that the growth of the various counties of the State during the sixty year period next preceding the year 1960 has been varied and uneven as is shown by said Exhibits A and B.

That the present apportionment of the State Legislature of the State of Alabama ran its course and became unconstitutional, obsolete and discriminatory in 1911 by virtue of the explicit requirements of Sections 197 through 201, inclusive, of Article 9 of the Constitution of Alabama of 1901.

That said apportionment denies to the people of Jefferson County and other urban counties the additional number of Representatives and Senators to which they are entitled to vote by virtue of the fact that Jefferson County and many other counties have had a sufficient number of people since 1960, and prior thereto, as shown by Exhibits A and B, to entitle them to additional representatives and senators, and, therefore, the distribution of Senators and Representatives is arbitrary and contrary to the provisions of the Constitution of Alabama of 1901.

[fol. 46]

That Exhibits A and B are illustrative of the discrimination now made among the various representative and senatorial districts of the State of Alabama; that when all inequalities are taken together, the violations of the particular constitutional provisions as set out above, result in a distortion and emasculation of the constitutional system established, defined, and guaranteed by the Constitution of Alabama of 1901 and the Fourteenth Amendment to the Constitution of the United States; that this distortion of said constitutional system of selecting membership of the

Legislature prevents it, as it is now composed, from being a body representative of the people of the State of Alabama, since a minority of 23.3 per cent of the population of the State now controls more than fifty (50) per cent of the membership of the house of representatives, and a minority of 25.0 per cent of the population of the State now controls more than fifty (50) per cent of the membership of the State; and that thus a minority now rules in Alabama by virtue of its control of both Houses of the Legislature, contrary to the rudimentary principles of representative government.

That to further illustrate the inequalities of the present unconstitutional apportionment of the Legislature of the State of Alabama the County of Lowndes, Alabama, with a population of 15,417 according to the 1960 Federal Census has two members of the House of Representatives and one member of the Senate. The County of Jefferson, Alabama, has a population of 634,864 according to the 1960 Federal Census and has seven members of the House of Representatives and one member of the Senate. Each Representative in Jefferson County represents 90,695 people. In Lowndes County each Representative represents 7,709 people. The Senator from Jefferson County represents 634,864 people. The Senator from Lowndes County represents 15,417 people.

The present mal-apportionment of Senatorial Districts results in Districts 1, 4, 6, 11, 13, 21, 28 and 33 having a total of only eight members of the Senate (22.9 per cent [fol. 47] of the total senate vote) yet they contain more than fifty (50) per cent of the population of Alabama.

In the House of Representatives the counties of Mobile, Jefferson, Madison, Tuscaloosa, Houston, Baldwin, Etowah, Marshall, Calhoun, Colbert, Cullman and DeKalb have a total of only twenty-four votes (22.6 per cent of the total house vote) but contain more than fifty (50) per cent of the population of Alabama.

In the House of Representatives the counties of Barbour, Bullock, Butler, Hall, Henry, Clarke, Elmore, Marengo, Pike, Lowndes, Perry, Wilcox and Sumter each have two members of the House of Representatives but the highest

population of any one of such counties is 30,524, the lowest population of any one of each county being 13,462.

In the Senate the counties of Lowndes, Wilcox, Barbour and Marengo comprise separate senatorial districts, being the sixteenth, twenty-second, twenty-fourth, and twentieth, respectively. The population of these counties is 15,417, 18,739, 24,700 and 27,098, respectively. Etowah County, with a population of 96,980, is joined with another, county, St. Clair, with a population of 25,388, to form the sixth district. Many counties with population in excess of that of Lowndes, Wilcox, Barbour or Marengo are joined with one or two other counties to form such senatorial districts.

X

That the Legislature of Alabama has adjourned each of its regular and special sessions since the year 1911 without passing any bill or resolution to reapportion itself in conformity with the Constitution of Alabama of 1901, although a number of bills or resolutions for such purpose have been from time to time introduced during said sessions.

That the Legislature of Alabama is presently in regular session and although several bills have been introduced to reapportion the Legislature of Alabama during said session [fol. 48] no bill to effect compliance with the Constitution of Alabama of 1901 has been passed nor is any such bill presently pending in such Legislature which has not been defeated or tabled to the end of this session and thereby effectively defeated; and that, by its course of conduct for a period of years extending from 1911 through the date of filing of this complaint, inclusive, the Legislature of Alabama has established a pattern and course of conduct that clearly demonstrates that no reapportionment in accordance with the Constitution of Alabama of 1901 shall be effected by the said Legislature, either during this session or ever thereafter. That Section 286 of Article 18 of the Constitution of Alabama of 1901 provides the only mode and method of calling a constitutional convention in Alabama:

> No convention shall hereafter be held for the purpose of altering or amending the constitution of this state,

unless after the legislature by a vote of a majority of all the members elected to each house has passed an act or resolution calling a convention for such purpose the question of convention or no convention shall be first submitted to a vote of all the qualified electors of the state, and approved by a majority of those voting at such election. No act or resolution of the legislature calling a convention for the purpose of altering or amending the constitution of this state, shall be repealed except upon the vote of a majority of all the members elected to each house at the same session at which such act or resolution was passed; provided, nothing herein contained shall be construed as restricting the jurisdiction and power of the convention, when duly assembled in pursuance of this section, to establish such ordinances and to do and perform such things as to the convention may seem necessary or proper for the purpose of altering, revising, or amending the existing constitution.

That representation at any constitutional convention called by the Legislature of Alabama would be established by the said Legislature and, it is extremely unlikely that the representation at and membership of any such constitutional convention would differ from that of the Legislature of Alabama.

That the Supreme Court of Alabama has ruled that the present apportionment of the Legislature of Alabama is unconstitutional, but that it will not interfere with such [fol. 49] apportionment. That all forms of relief for plaintiffs have been heretofore exhausted and that this Honorable Court is the last and only authority to which the people of Alabama may look for relief.

XI

That a vote on an amendment to the Constitution of Alabama of 1901 is counted and returned in the same manner as is the vote for members of the legislature. (Title 17, Sec. 210, Alabama Code of 1940, as amended.) The secretary of state is charged with the duties of receiving the

returns of any such vote from the returning officers of each county together with a certificate of the total number of qualified electors who voted in such election (Ibid, Sec. 211) and, in the presence of both the governor and attorney general or either of them, opening such returns and ascertaining whether a majority voted in favor of an amendment (Ibid, §212).

That the plaintiffs are informed, and believe, and based upon such information and belief do aver that at least two legislative reapportionment bills calling for amendments to the Constitution of Alabama of 1901, one submitted by the senator from the twenty-second senatorial district (who represents 18,739 people), and the other submitted by the senator from the ninth senatorial district (who represents 57,305 people), neither such bill complying with the requirements of Section 50 of Article IV, Sections 197 through 201, inclusive, of Article IX, and Section 284 of Article XVIII of the Constitution of Alabama of 1901 have been introduced into the Senate of Alabama and have been approved by the appropriate committee or committees thereof and that such approval by such committee or committees occurred on or about the 21st day of August, 1961, a date after the date of filing of this suit. That both such bills provide for amendments to the Constitution of Alabama of 1901 and would alter, change, amend, or otherwise eliminate the present provisions of the Constitution of Alabama of 1910 which require apportionment of the legislature of Alabama be based upon population.

[fol. 50] That any amendment or amendments to all or any of Section 50 of Article IV or Sections 197 through 201, inclusive, of Article IX or Section 284 of Article XVIII of the Constitution of Alabama of 1901 proposed by the present malapportioned legislature of the state of Alabama which alter, change, amend, or otherwise eliminate the present mandate of the Constitution of Alabama of 1901 that the apportionment of the Legislature of Alabama be based on population will be void, illegal and unconstitutional, and, during the pendency of this suit, would tend to effect and interference with the proper and due administration of justice.

[fol. 51] XII

That Section 4 of Article 4 of the Constitution of the United States contains provisions for a republican form of government.

> The United States shall guarantee to every State in this Union a Republican Form of government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence.

That the admission of the State of Alabama into the Union was enabled by an Act of Congress approved March 2, 1819 (3 Stat. L. 489) which provided, in part:

> . . . if it be determined to be expedient [the formation of a constitution and state government], *Provided*, that the same, when formed shall be republican. . . .

That by resolution approved December 14, 1819, Alabama was declared admitted into the Union such resolution stating, in part:

> . . . the people of the said territory did, on the second day of August, in the present year, by a convention called for that purpose, form for themselves a constitution and state government, which constitution and state government, so formed, is republican, and in conformity to the principles of the articles of compact between the original states and the people and states in the territory northwest of the river Ohio, passed on the thirteenth day of July, one thousand seven hundred and eight-seven, so far as the same have been extended to the said territory by the articles of agreement between the United States and the state of Georgia. . . . (3 Stat. L. 608)

That what is known as the Constitution of 1868, did not become the Constitution of Alabama until it was approved by the Congress of the United States which was done on

June 25, 1868, when the President's veto of the "act to admit the States of North Carolina, South Carolina, Georgia, Alabama and Florida, to representation in Congress," the preamble of which stated in part, that such other states had:

> . . . framed constitutions of State government which are republican, and have adopted said constitutions by large majorities of the vote cast at the elections held for the ratification or rejection of the same. (15 Stat. L. 73-4)

[fol. 52] was overriden by Congress.

That each of the aforementioned repeated guarantees of a republican form of government are continuing yet have been violated by the mal-apportionment of the Legislature of Alabama in the manner herein elsewhere stated and by the continued abuse of the rights of the plaintiffs and others similarly situated under both the Constitution of Alabama of 1901, and the Constitution of the United States.

XIII

That the Legislature of Alabama for a number of years unjustly discriminated against plaintiffs and others similarly situated in the larger urban areas of Alabama in the allocation of the burdens of taxation and in the unequal and unjust distribution of funds derived by the State through the exercise of its taxing power, as represented by statutes passed to raise and distribute revenues. Said discrimination, involving taxation without fair representation is shown principally by measures for the support of the public schools of the State, counties, municipalities, and school districts, and for the maintenance of roads and highways, and for other purposes. The said Legislature, over a period of years, has enacted and has maintained an arbitrary, unreasonable and discriminatory formula for the making of contributions to the needs of County governments, in that, of the seven cents (7) collected by the State for the selling, use, or consumption, distributing, storing or withdrawal from storage of each gallon of gasoline, three

cents (3) is divided and distributed equally among the sixty-seven counties of the state pursuant to the following provisions of the Code of Alabama of 1940:

> Two-sevenths of the proceeds of the excise tax herein imposed, less cost of collecting and administering this article, shall be paid into the treasury to the credit of the sixty-seven counties in the state, and shall be divided and distributed equally among the sixty-seven counties of this state, payment to be made by state warrant to be mailed to the treasurer of such counties or repositories of such counties, on or before the tenth day of each month following collection. (Title 51, §655)
>
> [fol. 53] Two-sevenths of the proceeds of the excise tax herein imposed shall be divided monthly as collected, less the cost of collection, as follows: . . . The other one-half of said two-sevenths shall be divided equally among the sixty-seven counties of the State of Alabama monthly as collected, less the cost of collection, payment to be made to the county treasurer or depository of such counties on or before the tenth day of each month of the year, and said funds shall be used by the several counties of the state exclusively for the construction, maintenance, supervision and policing of the public roads and bridges in the respective counties. . . . (Title 51, §657)

In the allocation of sales and use taxes, alcoholic beverage taxes, income taxes, beer taxes, and other taxes levied on the people of the State of Alabama by such unlawfully apportioned Legislatures, the discriminations provided in said statutes have been made possible and effective by the failure or refusal of the Legislature of the State of Alabama to follow the mandates of the State Constitution requiring the reapportionment of the Legislature at the time of expiration of each ten year period after the year 1901.

XIV

That the defendants, or their successors in office, unless prevented by this Court, will perform their duties as they and their predecessors in office have performed those duties

for the fifty years next preceding the filing of this complaint, such duties having been performed in accordance with, under, and by virtue of Sections 1 and 2 of Title 32, Alabama Code of 1940, and Sections 202 and 203 of Article 9 of the Alabama Constitution of 1901, and the rights of these plaintiffs and all others similarly situated, can be protected only by a decree of this Court declaring Sections 1 and 2 of Title 32, Alabama Code of 1940, as amended, to be unconstitutional and further declaring the apportionment provided for in the said Alabama Code of 1940 and in the Alabama Constitution of 1901 to be unconstitutional and by enjoining the defendants from holding another unconstitutional election in 1962, or in any year thereafter, and by requiring either:

(a) that the defendants exercise their respective duties and prepare for the election of 1962 in such manner that the election will be held at large over the State [fol. 54] as a whole, whereby every qualified voter shall have the right to vote for every member of the Senate and House of Representatives to be elected to the 1963 Legislature, or

(b) that the defendants obey a decree of this Court reapportioning and redistricting the State by applying the formulae set out in the Alabama Constitution of 1901 by referring to the 1960 official Federal Census population figures of the various counties of the State unless and until the Legislature of the State of Alabama, by proper law, reapportions constitutionally the representatives and senators among the counties of the State.

Wherefore, Premises Considered, Plaintiffs respectfully pray that this Court take jurisdiction of this matter; that a special three-judge Court be called to hear and determine this cause as by law provided in 62 Stat. L. 968; 28 U.S.C. Sec. 2281, et seq., and declare the rights of the plaintiffs pursuant to 58 Stat. L. 890, 28 U.S.C. Sec. 2201, in the premises to-wit:

A. That the present legislative apportionment of the State of Alabama has deprived and continues to deprive the plaintiffs of liberty and property without due process of law and has denied and continues to deny the plaintiffs equal protection of the laws in violation of the Fourteenth Amendment of the Constitution of the United States.

B. That the apportionment of the Legislature of the State of Alabama as established under and by virtue of Sections 1 and 2 of Title 32 of the Alabama Code of 1940, as amended, and Sections 202 and 203 of Article 9 of the Constitution of Alabama of 1901 are void and invalid as being contrary to the continuing duty of the State of Alabama under the laws and Constitution of the United States to continue the establishment of a republican form of government, and contrary to the Fourteenth Amendment of the Constitution of the United States and the Constitution of Alabama of 1901 because of the failure to redistrict the counties forming senatorial districts and to reapportion the number of senators thereby and because of the failure to reappor- [fol. 55] tion the house of representatives of the Legislature of Alabama in accordance with present population as hereinbefore averred.

C. That the right of the plaintiffs to vote as guaranteed by the laws and Constitution of Alabama of 1901 and the Constitution of the United States has been impaired.

And plaintiffs further particularly pray that, after hearing of this action, the Court grant further relief in accordance with 62 Stat. L. 964, 28 U.S.C. Section 2202 as follows:

D. That the Legislature of Alabama may not propose an amendment to the Constitution of Alabama of 1901 which would effect a change, alteration or amendment of those provisions of the Constitution of Alabama of 1901 which establish population as the proper basis for districting and apportioning the Legislature until such time as the Legislature has redistricted and reapportioned itself in accordance therewith.

E. (1) That the defendant, Bettye Frink, individually and as Secretary of State of the State of Alabama, and her successors in said office, and her agents, officers and em-

ployees be enjoined and restrained from: receiving and preserving packages of ballots as well as written requests therefor from those appointed to decide election contests; receiving certificates of nomination by political parties as well as petitions of electors to nominate independent candidates; certifying the names of nominees of political parties to the various judges of probate; receiving returns of election and being present for the opening and counting of those so received; furnishing certificates of election to members of the legislature; furnishing blank certificates of the results of elections for members of the legislature and receiving same back when filled out; performing duties required for general elections in special elections; receiving the names of members of a committee to receive, expend, audit and disburse campaign contributions; receiving the certification of candidates for nomination to the legislature and certifying same to the judges of probate; receiv- [fol. 56] ing notice of the entering of a primary election given by the state executive committee or other governing authority of a political party; receiving certification from the chairman of the state executive committee of a political party as to the names of nominees not having a majority, but running first and second in the first primary election and certifying those names to the various probate judges whose counties are affected thereby; certifying to the judges of probate lists of the nominees of political parties; notifying judges of probate of the results of election contests before the state executive committee of a political party; insofar as such acts apply to primary, special and general elections of members of the Legislature of the State of Alabama until such time as the Legislature of Alabama reapportions itself in accordance with the applicable provisions of Sections 50, 197, 198, 199, 200, 201 and 284 of the Constitution of Alabama of 1901.

(2) That the defendants, Harrell Hammonds, John A. Sankey and J. Paul Meeks, individually, and as Judges of Probate and their successors in said office and their agents, officers and employees be enjoined and restrained from: causing to be delivered to each polling place alphabetical lists of those who have paid their poll tax and those who are

registered to vote thereat; receiving and preserving a copy or copies of the certificate of results of an election; receiving certification of nominations by political parties as well as certification of those independent candidates properly nominated as such by petitions of electors and causing the names of such nominees to be printed upon the ballots utilized in his county; receiving from candidates not accepting their nominations notification to that effect; preserving certificates and petitions for nominations; causing the printing of voter instruction cards, ballots, blank poll lists, certificates of results, oaths, and all other stationery and blank forms necessary to conduct elections and causing the foregoing to be properly distributed; assembling with others to make a correct statement of election results; re- [fol. 57] ceiving the original public declaration of the results of an election of members of the house of representatives and recording same and providing certified copies thereof and allowing a copy or copies thereof to be posted on the courthouse door; receiving and forwarding to the secretary of state certificates setting forth the returns of election for members of the legislature; performing duties required for general elections in special elections, receiving the names of members of a committee to receive, expend, audit and disburse campaign contributions and receiving detailed, itemized statements of expenditures made with an affidavit of the candidate attached thereto; preparing and distributing ballots for primary elections; furnishing to the officers of a primary election a copy of the official list of voters and other election supplies as well as envelopes; supplying voters whose votes are challenged with certificates to the effect that such voters names are on official voters lists; allowing their offices to be utilized as the proper place for receipt of ballot boxes by the county chairman of a political party; receiving from the secretary of state lists of the nominees of political parties; furnishing certified copies of registration lists and lists of poll tax payers to the parties to an election contest; receiving notification of the results of election contests before the state executive committee of a political party; accepting expense accounts of candidates; insofar as such acts apply to primary, special and general elections of members of the Legislature of the State of Ala-

bama until such time as the Legislature of Alabama reapportions itself in accordance with the applicable provisions of Sections 50, 197, 198, 199, 200, 201 and 284 of the Constitution of Alabama of 1901.

(3) That the defendant, C. O. Vardaman, individually, and as the chairman of the Alabama State Republican Executive Committee and his successors in such office, and that the defendant, Sam Engelhardt, individually, and as chairman of the Alabama State Democratic Executive Committee, and his successors in such office and the agents, [fol. 58] officers, and employees of each of them be enjoined and restrained from: certifying an election not to come under the primary election law; certifying to the secretary of state the names of candidates for nomination to the legislature; receiving declarations of candidacy and fees therefor from candidates for the legislature; a copy of certificates of results of elections from inspectors and clerks at each and every election district or precinct in the state; receiving the tabulation of the first and second primary elections result from the county chairman of the political parties; accepting the declination of a nomination for office by a candidate therefor, appointing a subcommittee of the state executive committee to receive such returns, canvass and tabulate them, and certifying to the secretary of state the results of such primary elections as well as the nominee victorious therein; deciding who shall be the nominee in the event of a tie vote; receiving statements of contests of nominations, notifying contestee thereof; filing statements with reference thereto in the office of the circuit clerk of the county of residence of the contestee; calling a meeting of the state executive committee to hear the charges against the contestee or appointing a subcommittee therefor; administering oaths to witnesses and accepting deposits sufficient to pay the cost of the summoning of them; appointing a commissioner to take testimony and accepting deposits to pay therefor; summoning witnesses and notifying the secretary of state of the results of any such contest; appointing subcommittees to look after, supervise and conduct primary elections and doing any and all things which the state executive committee and

the chairman thereof has or could exercise under the provisions of Chapter 2 of Title 17, Alabama Code of 1940, as amended. Insofar as such acts apply to primary, special and general elections of members of the Legislature of the State of Alabama until such time as the Legislature of Alabama reapportions itself in accordance with the ap- [fol. 59] plicable provisions of Sections 50, 197, 198, 199, 200, 201 and 284 of the Constitution of Alabama of 1901.

(4) That the defendant O. P. Drake, individually, and as Secretary of the Alabama State Republican Executive Committee and his successors in such office, and the defendant, H. G. Rains, individually, and as Secretary of the Alabama State Democratic Executive Committee, and his successors in such office and the agents, officers, and employees of each of them be enjoined and restrained from: certifying the election of each said committee not to have a primary election under the primary election law; insofar as such acts apply to members of the Legislature of the State of Alabama until such time as the Legislature of Alabama reapportions itself in accordance with the applicable provisions of Sections 50, 197, 198, 199, 200, 201 and 284 of the Constitution of Alabama of 1901.

(5) That the defendant, MacDonald Gallion, individually, and as Attorney General of the State of Alabama, and his successors in such office, and his agents, officers, assistants and employees, be enjoined and restrained from: advising probate judges, the secretary of state and other state departments as to the law of the State of Alabama and from the giving of a written or oral legal opinion contrary to such decision of this Court and from being present, in company with the governor or secretary of state for the official canvass (the opening and counting) of all returns of elections required by law to be sent to the secretary of state; insofar as such acts apply to members of the Legislature of the State of Alabama until such time as the Legislature of Alabama reapportions itself in accordance with the applicable provisions of Sections 50, 197, 198, 199, 200, 201 and 284 of the Constitution of Alabama of 1901.

(6) That the defendants, MacDonald Gallion and Bettye Frink, Attorney General and Secretary of State of the State of Alabama, respectively, and that the defendants, [fol. 60] J. Paul Meeks, John A. Sankey and Harrell Hammonds, Judges of Probate of Jefferson, Montgomery and Lowndes Counties, respectively, and their successors in office, and their agents, officers, assistants and employees be enjoined and restrained from: doing and performing any and all acts, things, and duties, including but not limited to, the preparation and distribution of ballots, receipt of returns and certificates of the total number of electors having voted, being amongst those present at the time of ascertainment of whether or not a majority of the qualified electors of the state voted "yes", and doing any other act or thing or performing any other duty in connection with elections which would enable the conduct of an election on a constitutional amendment which would, in any manner, change, alter, amend or delete those provisions of the Constitution of Alabama of 1901 which establish population as the proper basis for districting and apportioning the Legisiature of Alabama until such time as said Legislature has reapportioned itself in accordance with the presently applicable provisions of the Constitution of Alabama of 1901.

F. To direct the defendants to declare the next primary and general elections for members of the Alabama Legislature on an at-large basis, and to direct them to take whatever further action is necessary to insure that all candidates for election to the 1963 session of the Legislature of Alabama run at-large throughout the entire State on the following basis: the thirty-five (35) candidates for the State Senate receiving the highest number of votes shall be declared elected to the State Senate; and the one hundred and six (106) candidates for the House of Representatives receiving the highest number of votes shall be declared elected to the House of Representatives; and said method of election to continue until such time as the said Legislature enacts legislation reapportioning the State senatorial and representatives districts according to the Constitution of the State of Alabama.

[fol. 61] G. For such other and further relief as may seem just, equitable and proper.

This is the first application for any extraordinary process in this cause.

Respectively submitted,

Charles Morgan, Jr., 1512 Comer Building, Birmingham, Alabama;

George Peach Taylor, 621 Frank Nelson Building, Birmingham, Alabama;

Robert M. Loeb, Frank Nelson Building, Birmingham, Alabama;

Kenneth Howell, Brown-Marx Building, Birmingham, Alabama, By Charles Morgan, Jr., George Peach Taylor.

Duly sworn to by Charles Morgan, Jr. (jurat omitted in printing).

[fol. 62] Certificate of Service (omitted in printing).

[fol. 63]

EXHIBIT A TO AMENDED COMPLAINT

See Opposite ☞

SENATORIAL DISTRICTS
(one Senator per district)

Dist.	1900 Pop.	1960 Pop.	Counties
1	48,946	98,135	Lauderdale and Limestone
2	48,944	84,955	Lawrence and Morgan
3	50,522	85,879	Blount, Cullman and Winston
4	43,702	117,348	Madison
5	53,797	84,699	Jackson and Marshall
6	52,749	122,368	Etowah and St. Clair
7	34,874	95,878	Calhoun
8	35,773	65,495	Talladega
9	54,201	57,305	Chambers and Randolph
10	55,774	65,531	Elmore and Tallapoosa
11	36,147	109,047	Tuscaloosa
12	55,379	84,630	Fayette, Lamar and Walker
13	140,420	634,864	Jefferson
14	57,112	41,923	Pickens and Sumter
15	57,121	76,564	Autauga, Chilton and Shelby
16	35,651	15,417	Lowndes

Lawrence	20,124	24,501	1
Lee	31,826	49,754	2
Limestone	22,387	36,513	1
Lowndes	35,651	15,417	2
Macon	23,126	26,717	1
Madison	43,702	117,348	2
Marengo	38,315	27,098	2
Marion	14,494	21,837	1
Marshall	23,289	48,018	1
Mobile	62,740	314,301	3
Monroe	23,666	22,372	1
Montgomery	72,047	169,210	4
Morgan	28,820	60,454	2
Perry	31,783	17,358	2
Pickens	24,402	21,882	1
Pike	29,172	25,987	2
Randolph	21,647	19,477	1
Russell	27,083	46,351	2
St. Clair	19,425	25,388	1
Shelby	23,684	32,132	1
Sumter	32,710	20,041	2
Talladega	35,773	65,495	2
Tallapoosa	29,675	35,007	2
Tuscaloosa	36,147	109,047	2
Walker	25,162	54,211	2
Washington	11,134	15,372	1

[fol. 66]

6	52,745	122,366	Etowah and St. Clair
7	34,874	95,878	Calhoun
8	35,773	65,495	Talladega
9	54,201	57,305	Chambers and Randolph
10	55,774	65,531	Elmore and Tallapoosa
11	36,147	109,047	Tuscaloosa
12	55,379	84,630	Fayette, Lamar and Walker
13	140,420	634,864	Jefferson
14	57,112	41,923	Pickens and Sumter
15	57,121	76,564	Autauga, Chilton and Shelby
16	35,651	15,417	Lowndes
17	58,621	77,953	Butler, Conecuh and Covington
18	50,281	31,715	Bibb and Perry
19	57,060	59, 180	Choctaw, Clarke and Washington
20	38,315	27,098	Marengo
21	48,180	104,971	Baldwin, Escambia and Monroe
22	35,631	18,739	Wilcox
23	40,285	53,376	Dale and Geneva
24	35,152	24,700	Barbour
25	69,812	70,479	Coffee, Crenshaw and Pike
26	55,070	40,179	Bullock and Macon
27	58,909	96,105	Lee and Russell
28	72,047	169,210	Montgomery

Dist.	1900 Pop.	1960 Pop.	Counties
29	44,654	57,720	Cherokee and DeKalb
30	54,657	56,667	Dallas
31	52,346	90,331	Colbert, Franklin and Marion
32	55,193	33,137	Greene and Hale
33	62,740	314,301	Mobile
34	46,449	34,037	Clay, Cleburne and Coosa
35	36,147[1]	66,004	Henry and Houston
35	1,828,697[2]	3,266,740[3]	

[Fol. 66]

[1]Houston added to circuit on creation of county out of Dale, Geneva, and Henry in 1903.
[2]True senatorial district in 1901 - 52,248
[3]True senatorial district in 1961 - 93,335

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[Fol. 67]

[1]Houston created out of Dale, Geneva, and Henry Counties in 1903, and given one representative
[2]True representative district, 1901, 17,416
[3]True representative district, 1961, 30,818

67

County	1900 Pop.	1960 Pop.	Number of Representatives
Autauga	17,915	18,739	1
Baldwin	13,194	49,088	1
Barbour	35,152	24,700	2
Bibb	18,498	14,357	1
Blount	23,119	25,449	1
Bullock	31,984	13,462	2
Butler	25,761	24,560	2
Calhoun	34,874	95,878	2
Chambers	32,554	37,828	2
Cherokee	21,096	16,303	1
Chilton	16,522	25,693	1
Choctaw	18,136	17,870	1
Clarke	27,790	25,738	2
Clay	17,099	12,400	1
Cleburne	13,206	10,911	1
Coffee	20,972	30,583	1
Colbert	22,341	46,506	1
Conecuh	17,514	17,762	1
Coosa	16,144	10,726	1
Covington	15,346	35,631	1
Cranshaw	19,668	14,909	1

[illegible]	[illegible]	[illegible]	
Calhoun	34,874	95,878	2
Chambers	32,554	37,828	2
Cherokee	21,096	16,303	1
Chilton	16,522	25,693	1
Choctaw	18,136	17,870	1
Clarke	27,790	25,738	2
Clay	17,099	12,400	1
Cleburne	13,206	10,911	1
Coffee	20,972	30,583	1
Colbert	22,341	46,506	1
Conecuh	17,514	17,762	1
Coosa	16,144	10,726	1
Covington	15,346	35,631	1
Crenshaw	19,668	14,909	1
Cullman	17,849	45,572	1
Dale	21,189	31,066	1
Dallas	54,657	56,667	3
DeKalb	23,558	41,417	1
Elmore	26,099	30,524	2
Escambia	11,320	33,511	1
Etowah	27,361	96,980	2
Fayette	14,132	16,148	1
Franklin	16,511	21,988	1
Geneva	19,096	22,310	1
Greene	24,182	13,600	1

County	1900 Pop.	1960 Pop.	Number of Representatives
Hale	31,011	19,537	2
Henry	36,147	15,286	2
Houston	——[1]	50,713	1
Jackson	30,508	36,681	2
Jefferson	140,420	634,864	7
Lamar	16,084	14,271	1
Lauderdale	26,559	61,622	2
Lawrence	20,124	24,501	1
Lee	31,826	49,754	2
Limestone	22,387	36,513	1
Lowndes	35,651	15,417	2
Macon	23,126	26,717	1
Madison	43,702	117,348	2
Marengo	38,315	27,098	2
Marion	14,494	21,837	1
Marshall	23,289	48,018	1
Mobile	62,740	314,301	3
Monroe	23,666	22,372	1
Montgomery	72,047	169,210	4
Morgan	28,820	60,454	2
Perry	31,783	17,358	2
Pickens	24,402	21,882	1
Pike	29,172	25,987	2

County	1900 Pop.	1960 Pop.	Number of Representatives
Wilcox	35,691	18,739	2
Winston	9,554	14,858	1
Total	1,828,697[2]	3,266,740[3]	106

[fol. 68] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

[Title omitted]

ANSWER OF MACDONALD GALLION, ATTORNEY GENERAL OF ALABAMA—Filed September 1, 1961

For Answer to the Complaint as last amended, MacDonald Gallion, Attorney General of Alabama, says as follows:

1. The Court lacks jurisdiction of the subject matter.

2. The Complaint fails to state a claim upon which relief can be granted against this Defendant.

3. Indispensable party defendants are not before the Court.

4. This Defendant has no constitutional or statutory duties concerning reapportionment nor does he supervise or conduct elections.

5. That this, in substance, is a suit against the State contrary to the Eleventh Amendment to the United States Constitution and Section 14 of the Alabama Constitution of 1901.

Further answering, this Defendant says that although it is true that the Constitution of Alabama requires the Legislature to reapportion itself after each decennial census, and he agrees that this should be done, he specifically denies that he has any duties in connection therewith, [fol. 69] but on the contrary avers that this is a political matter committed exclusively to the Legislative branch of the State Government.

MacDonald Gallion, Attorney General of the State of Alabama, Willard W. Livingston, Chief Assistant Attorney General of the State of Alabama,

Leslie Hall, Assistant Attorney General of the State of Alabama, Gordon Madison, Assistant Attorney General of the State of Alabama.

Certificate of Service (omitted in printing).

[fol. 70] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

[Title omitted]

MOTION OF HARRELL HAMMONDS TO DISMISS—
Filed September 6, 1961

Comes the Defendant Harrell Hammonds, Judge of Probate of Lowndes County, Alabama, and moves the Court as follows:

1. To dismiss this action because the complaint, as amended, fails to state a claim against this Defendant upon which relief can be granted.

2. To dismiss this action because there is a misjoinder of parties defendant.

3. To dismiss this action because the members of the Legislature of Alabama, i.e., the House of Representatives and the State Senate, are proper and necessary parties to this action and they nor either of them have been joined as partles defendant herein.

[fol. 71] E. C. Boswell, Jack W. Smith, Attorneys for Defendant, Harrell Hammonds.

Boswell & Smith, Attorneys at Law, P. O. Box 278, Geneva, Alabama.

Certificate of Service (omitted in printing).

[fol. 72] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

[Title omitted]

ORDER DESIGNATING THREE-JUDGE COURT—
September 6, 1961

The Honorable Frank M. Johnson, Jr., United States District Judge for the Middle District of Alabama, to whom an applictaion for injunction and other relief has been presented in the above styled and numbered cause, having notified me that the action is one required by act of Congress to be heard and determined by a district court of three judges, I, Elbert P. Tuttle, Chief Judge of the Fifth Circuit, hereby designate the Honorable Richard T. Rives, United States Circuit Judge, and the Honorable Daniel H. Thomas, United States District Judge for the Southern District of Alabama, to serve with Judge Johnson as members of, and with him to constitute the said court to hear and determine the action.

Witness my hand this 6th day of September, 1961.

Elbert P. Tuttle, Chief Judge, Fifth Circuit.

[fol. 80] [File endorsement omitted]

THE MIDDLE DISTRICT OF ALABAMA

IN THE UNITED STATES DISTRICT COURT FOR

NORTHERN DIVISION

[Title omitted]

ANSWER OF BETTYE FRINK,
SECRETARY OF STATE OF THE STATE OF ALABAMA
—Filed September 25, 1961

For Answer to the Complaint, as last amended, Bettye Frink, Secretary of State, of the State of Alabama, says as follows:

1. The Court lacks jurisdiction of the subject matter.

2. The Complaint fails to state a claim upon which relief can be granted against this Defendant.

3. Indispensable party Defendants are not before the Court.

4. This Defendant has no constitutional or statutory duties concerning reapportionment of the Legislature of the State of Alabama.

5. That this, in substance, is a suit against the State contrary to the Eleventh Amendment to the United States Constitution and Section 14 of the Alabama Constitution of 1901.

6. That this Defendant admits that she is the duly elected, qualified and acting Secretary of State of the State of Alabama with her office in the City of Montgomery, Montgomery County, in said State; that the Secretary of State of the State of Alabama is a Constitutional Officer, a part of the Executive Branch of the State, and is the [fol. 81] person to whom all returns of elections for Members of the Legislature must be made; and that among her duties are those set forth in Paragraph IV on pages 3 and 4 of the Amended Bill of Complaint.

Further answering, this Defendant says that although the Constitution of Alabama requires the Legislature to reapportion itself after each decennial census, and although she agrees that this should be done, she specifically denies that she has any duties in connection therewith, but affirmatively alleges that the Amended Complaint shows on its face that this is a political matter committed exclusively to the Legislative Branch of the State Government.

Further answering, this Defendant says that this Court has no jurisdiction or authority to grant the relief prayed for in Paragraphs E (1) and (6) and F of the Amended Complaint inasmuch to do so would require this Defendant to act contrary to the Constitution and Statutes of the State of Alabama.

Bettye Frink, Secretary of State, State of Alabama, Defendant.

Certificate of Service (omitted in printing).

[fol. 82] (File endorsement omitted)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
(NORTHERN DIVISION)

[Title omitted]

MOTION OF R. E. FARR, ET AL., TO INTERVENE
—Filed November 1, 1961

The undersigned, described herein as intervenors, respectfully move the Court for permission to intervene in this action (as plaintiffs) individually and as representatives of the class hereinafter described, and as grounds therefor state:

I

R. E. Farr is a resident of Alabama and a citizen of Alabama and of the United States. He is Director of District 36 of the United Steelworkers of America, an unincorpo-

rated association. This organization is a labor union and a large number of its members are individuals who reside in and are citizens of the State of Alabama and are citizens of the United States.

Marshall Meadows is a resident of Jefferson County, Alabama, a citizen of Alabama and of the United States, and is President of Local Union 1013 affiliated with the United Steelworkers of America. Said Local Union includes in its membership a large number of individuals who are citizens of the State of Alabama and are citizens of the United States and who are residents of Jefferson County, Alabama.

Jack Hopping is a resident of Jefferson County, Alabama, a citizen of the State of Alabama and of the United States, and is President of Local Union 1489 affiliated with the United Steelworkers of America. Said Local Union includes in its membership a large number of individuals who are citizens of the State of Alabama and of the United States and who are residents of Jefferson County, Alabama.

Jack Ryan is a resident of Etowah County, Alabama, a citizen of the State of Alabama and of the United States, and is President of Local Union 2176 affiliated with the United Steelworkers of America. Said Local Union includes in its membership a large number of individuals who are citizens of the State of Alabama and of the United States and who are residents of Etowah County, Alabama.

Max W. Morgan is a resident of Mobile County, Alabama, a citizen of the State of Alabama and of the United States, and is President of Local Union 320 affiliated with the United Steelworkers of America. Said Local Union includes in its membership a large number of individuals who are citizens of the State of Alabama and of the United States and who are residents of Mobile County, Alabama.

[fol. 84]

II

The individuals who are citizens of the State of Alabama and of the United States, and in particular who are residents, taxpayers and duly qualified and registered voters of Jefferson, Etowah and Mobile Counties, respectfully, and who are also members of the above labor organizations, constitute a class so numerous as to make it impracticable

to bring them all before this Court as nominal intervenors. The above named intervenors, in their respective counties, adequately and fairly represent the interests of all of said individual citizens as a class, and the rights of such citizens and the relief sought herein for them are common and affected by common questions of law and fact. Each such named intervenor is a taxpayer and duly qualified and registered voter of his respective county.

The present legislative apportionment of the State of Alabama has deprived and continues to deprive the above named individual intervenors and the numerous individuals constituting the class represented by same, of rights guaranteed by the Constitution of the United States, and of rights guaranteed by the Constitution of Alabama, all as set forth in the amended complaint and exhibits filed herein.

Wherefore, these intervenors respectfully adopt the allegations of said amended complaint and exhibits as the pleading setting forth intervenors' claims to be adjudicated in this proceeding.

Respectfully,

Cooper, Mitch, Black & Crawford, By Jerome A. Cooper, As Attorneys for Intervenors.

1329 Brown Marx Bldg., Birmingham, Alabama.

[fol. 85] *Duly sworn to by R. E. Farr (jurat omitted in printing).*

Service and Certificate of Service (omitted in printing).

[fol. 89] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

[Title omitted]

ORDER GRANTING LEAVE TO INTERVENE BY R. E. FARR, ET AL.—November 16, 1961

This cause is now submitted upon the motion of R. E. Farr, Marshal Meadows, Jack Hopping, Jack Ryan and Max W. Morgan, made pursuant to Rule 24(b) and 24(c), Federal Rules of Civil Procedure, wherein said movants seek permission to intervene in this action as plaintiffs.

Upon consideration of said motion and pursuant to the authority of §2284, Title 28, United States Code, it is the Order, Judgment and Decree of the undersigned, as one of the judges designated for this Court, that the motion of the above-named movants, seeking leave to intervene in this cause as parties plaintiff, be and the same is hereby granted.

Done, this the 16th day of November, 1961.

Frank M. Johnson, Jr., United States District Judge.

[fol. 92] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
(NORTHERN DIVISION)

[Title omitted]

MOTION FOR A PRELIMINARY INJUNCTION—Filed March 29, 1962

Upon the verified complaint heretofore filed herein and the affidavits of Charles Morgan, Jr. and George Peach Taylor the Plaintiffs move the Court to issue a preliminary

injunction enjoining the defendants, their agents, servants, employees and attorneys and all persons in active concert and participation with them, pending the final hearing and determination of this action, from:

(1) Failing or refusing to cause the preparation of voting machines and paper ballots to be used in the Democratic primary elections of May 1st, May 15th, and May 29th, 1962 and in the general election of November, 1962, and in the primary and general elections of each year thereafter, in such a manner as would require the election of members of both the House of Representatives and Senate of the State of Alabama on an at-large basis, and to take whatever further action is necessary to insure that all candidates for party [fol. 93] nomination for election to the 1963 session of the Legislature of Alabama run at-large throughout the entire State of the following basis: the thirty-five (35) candidates for the State Senate receiving the highest number of votes shall be declared elected to the State Senate; and the one hundred and six (106) candidates for the House of Representatives receiving the highest number of votes shall be declared elected to the House of Representatives; and said method of election to continue until such time as the said Legislature enacts legislation reapportioning the State senatorial and representative districts according to the Constitution of the State of Alabama.

(2) Doing any act or thing or performing any official function whatsoever with respect to the Democratic primary election and run-off elections of May 1, May 15 and May 29, 1962, and any other Democratic primary election or special or general election in the year 1962 or thereafter in the event that each item set forth in the injunction issued by this Court be not done or complied with, such acts, things, and functions to include, but not be limited to, the certification of nominees or acceptance of such certification, the declaration of the winner of a primary or general election, the printing or furnishing of ballots and preparation and furnishing of voting machines, the furnishing or re-

ceiving of lists of qualified voters who have paid their poll tax, and any and all other official acts, things and functions dealing in and with said elections.

The grounds of this motion, as more fully set forth in the complaint, as amended and the annexed affidavits of Charles Morgan, Jr., and George Peach Taylor, are that:

(a) The legislature (House of Representatives and Senate) of the State of Alabama is severely mal-apportioned and as a result of such mal-apportionment the conducting of the 1962 Democratic primary elections and general election will result in a continuation of a system or scheme of representation in such legislature which deprives the plaintiffs of the equal protection of the law.

(b) The defendants, unless enjoined, threaten to conduct this election in the same manner as they and their predecessors in office have done for more than fifty years next preceding the filing of this motion.

(c) The conducting of the May 1st, May 15th, and May 29th, 1962 Democratic primary elections and the November, 1962 general election is causing and will cause immediate and irreparable injury to Plaintiffs and all others similarly situated.

(d) Unless the Defendants are restrained pending final [fol. 94] disposition of this action, the injury to plaintiffs will be irreparable even with final judgment for plaintiffs.

(e) No injury will be sustained by the defendants or by the public through the issuance of a preliminary injunction.

(f) The issuance of a preliminary injunction as prayed for herein will not cause undue inconvenience or loss to defendants, but will prevent irreparable injury to plaintiffs.

Plaintiffs further move this Court to convene for the purpose of hearing and determining the application for a preliminary injunction and this cause the statutory court of three judges, at least one of whom shall be a circuit judge, which such statutory court has been established in accordance with the provisions of Section 228, Title 28, United States Code.

Charles Morgan, Jr., 1012 Comer Building, Birmingham 3, Alabama, George Peach Taylor, 927 Brown Marx Building, Birmingham 3, Alabama, Attorneys for Plaintiffs.

Certificate of Service (omitted in printing).

[fol. 95]

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

(NORTHERN DIVISION)

AFFIDAVIT OF CHARLES MORGAN, JR. TO SUPPORT MOTION

State of Alabama)
Jefferson County)

Charles Morgan, Jr. being duly sworn on oath deposes and says as follows:

1. That he is a plaintiff in the above entitled action.

2. That this is an action to protect the voting rights of the plaintiffs and all others who are similarly situated and to protect their rights to equal protection of the laws by obtaining a declaration of the rights of the plaintiffs pursuant to 58 Stat. L. 890, 28 U.S.C. Sec. 2201, in the premises to-wit:

A. That the present legislative apportionment of the State of Alabama has deprived and continues to deprive the plaintiffs of liberty and property without due process of law and has denied and continued to deny the plaintiffs equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States of America.

[fol. 96] B. That the apportionment of the Legislature of the State of Alabama as established under and by virtue of Sections 1 and 2 of Title 32 of the Alabama Code of 1940, as amended, and Sections 202 and 203 of Article 9 of the Constitution of Alabama of 1901 are void and invalid as being contrary to the Fourteenth Amendment to the Constitution of the United States of America and the Constitution of Alabama of 1901 because of the failure of the Legis-

lature of Alabama to redistrict the counties forming senatorial districts and to reapportion the number of senators thereby and because of the failure of the legislature of Alabama to reapportion the house of representatives of the Legislature of Alabama in accordance with present population of Alabama as set forth in the Federal decennial census of 1960.

C. That the right of the plaintiffs to vote as guaranteed by laws and Constitution of Alabama of 1901 and the Constitution of the United States has been impaired.

D. That the Legislature of Alabama may not propose an amendment to the Constitution of Alabama of 1901 which would effect a change, alteration or amendment of those provisions of the Constitution of Alabama of 1901 which establish population as the proper basis for redistricting and reapportioning the Legislature until such time as the Legislature has redistricted and reapportioned itself in accordance therewith. And that this is also an action to procure an order of the court directing the defendants to declare the next primary and general election for nomination for or election to the Alabama Legislature on an at-large basis, and to direct them to take whatever further action is necessary to insure that all candidates for election to the 1963 session of the Legislature of Alabama run at-large throughout the entire State on the following basis: the thirty-five (35) candidates for the State Senate receiving the highest number of votes shall be declared elected to the State Senate; and the one hundred and six (106) candidates for the House of Representatives receiving the highest number of votes shall be declared elected to the House of Representatives; and said method of election to continue until such time as the said Legislature enacts legislation reapportioning the State senatorial and representatives districts according to the Constitution of the State of Alabama.

3. That Democratic party primary election in the State of Alabama and general elections in such state since the year 1901 have been held under the terms and provisions of and in accordance with Sections 1 and 2 of Title 32 Alabama Code of 1940, as amended which such sections ac-

cord with Sections 202 and 203 of Article 9 of the Constitution of Alabama of 1901.

[fol. 97] 4. That the conduct of elections in such manner maintains a system of mal-apportionment of members of the Alabama House of Representatives and the Alabama Senate which results in total rural domination of the Alabama Legislature.

5. That the votes of plaintiffs and all others similarly situated have been so diluted in their effectiveness due to such system of mal-apportionment as to result in a disparity between the vote of the plaintiffs and all others similarly situated which such disparity results in the vote of a resident of Lowndes County for representative being worth approximately 15 times that of plaintiffs; in the Senate, approximately 42 times.

6. That Democratic Party primary elections in Alabama are financed by the State of Alabama or by the treasuries of the counties thereof and that general elections in such state are financed by such state and that to the knowledge of plaintiffs only one seat in the Alabama House of Representatives has been held by a member of a political party other than the Democratic Party in the last 60 years.

7. That the results of the Democratic Party primary elections in the State of Alabama are and have been for many years for all practical purposes the results of the actual election of the State of Alabama and in the judgment of plaintiffs such Democratic primary election is in net effect actually the general election of the State of Alabama.

8. That unless the defendants are restrained and enjoined from conducting the coming May 1st, May 15th, and May 29th, 1962, democratic primary elections and unless they are further enjoined from holding the November, 1962 general election, plaintiffs will be irreparably injured in that they will not have been able to vote upon the proper number of legislators to which they and all others similarly situated are entitled to vote either on a basis of the proper number of legislators to which they are entitled under the Constitution of Alabama of 1901 or,

in the alternative, to vote upon all candidates for membership in the legislature of Alabama in an election held at an at-large basis.

9. That defendants have taken preliminary steps toward preparation of ballots and voting machines for the conduct of the coming May 1st, May 15th and May 29th, 1962, democratic primary elections, and unless they are restrained and enjoined from holding such primary elections, the election of candidates of such primary election will result in a continuation of the mal-apportionment of the old Legislature as set out herein and in the amended com-
[fol. 98] plaint filed in this cause.

Charles Morgan, Jr.

Sworn to and subscribed before me this the 29th day of March, 1962.

Timothy J. Norris, Notary Public.

[fol. 99]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
(NORTHERN DIVISION)

AFFIDAVIT OF GEORGE PEACH TAYLOR TO SUPPORT MOTION

State of Alabama)
Jefferson County)

GEORGE PEACH TAYLOR being duly sworn on oath deposes and says as follows:

1. That he is a plaintiff in the above entitled action.

2. That this is an action to protect the voting rights of the plaintiffs and all others who are similarly situated and to protect their rights to equal protection of the laws by obtaining a declaration of the rights of the plaintiffs pursuant to 58 Stat. L. 890, 28 U.S.C. Sec. 2201, in the premises to-wit:

A. That the present legislative apportionment of the State of Alabama has deprived and continues to deprive the

plaintiffs of liberty and property without due process of law and has denied and continues to deny the plaintiffs equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States of America.

[fol. 100] B. That the apportionment of the Legislature of the State of Alabama as established under and by virtue of Sections 1 and 2 of Title 32 of the Alabama Code of 1940, as amended, and Sections 202 and 203 of Article 9 of the Constitution of Alabama of 1901 are void and invalid as being contrary to the Fourteenth Amendment to the Constitution of the United States of America and the Constitution of Alabama of 1901 because of the failure of the Legislature of Alabama to redistrict the counties forming senatorial districts and to reapportion the number of senators thereby and because of the failure of the legislature of Alabama to reapportion the house of representatives of the Legislature of Alabama in accordance with present population of Alabama as set forth in the Federal decennial census of 1960.

C. That the right of the plaintiffs to vote as guaranteed by laws and Constitution of Alabama of 1901 and the Constitution of the United States has been impaired.

D. That the Legislature of Alabama may not propose an amendment to the Constitution of Alabama of 1901 which would effect a change, alteration or amendment of those provisions of the Constitution of Alabama of 1901 which establish population as the proper basis for redistricting and reapportioning the Legislature until such time as the Legislature has redistricted and reapportioned itself in accordance therewith. And that this is also an action to procure an order of the court directing the defendants to declare the next primary and general election for nomination for or election to the Alabama Legislature on an at-large basis, and to direct them to take whatever further action is necessary to insure that all candidates for election to the 1963 session of the Legislature of Alabama run at-large throughout the entire State on the following basis: the thirty-five (35) candidates for the

State Senate receiving the highest number of votes shall be declared elected to the State Senate; and the one hundred and six (106) candidates for the House of Representatives receiving the highest number of votes shall be declared elected to the House of Representatives; and said method of election to continue until such time as the said Legislature enacts legislation reapportioning the State senatorial and representatives districts according to the Constitution of the State of Alabama.

3. That Democratic party primary election in the State of Alabama and general elections in such state since the year 1901 have been held under the terms and provisions of and in accordance with Sections 1 and 2 of Title 32 Alabama Code of 1940, as amended which such sections accord with Sections 202 and 203 of Article 9 of the Constitution of Alabama of 1901.

[fol. 100a] 4. That the conduct of elections in such manner maintains a system of mal-apportionment of members of the Alabama House of Representatives and the Alabama Senate which results in total rural domination of the Alabama Legislature.

5. That the votes of plaintiffs and all others similarly situated have been so diluted in their effectiveness due to such system of mal-apportionment as to result in a disparity between the vote of the plaintiffs and all others similarly situated which such disparity results in the vote of a resident of Lowndes County for representative being worth approximately 15 times that of plaintiffs; in the Senate, approximately 42 times.

6. That Democratic Party primary elections in Alabama are financed by the State of Alabama or by the treasuries of the counties thereof and that general elections in such state are financed by such state and that to the knowledge of plaintiffs only one seat in the Alabama House of Representatives has been held by a member of a political party other than the Democratic Party in the last 60 years.

7. That the results of the Democratic Party primary elections in the State of Alabama are and have been for

many years for all practical purposes the results of the actual election of the State of Alabama and in the judgment of plaintiffs such Democratic primary election is in net effect actually the general election of the State of Alabama.

8. That unless the defendants are restrained and enjoined from conducting the coming May 1st, May 15th, and May 29th, 1962, democratic primary elections and unless they are further enjoined from holding the November, 1962 general election, plaintiffs will be irreparably injured in that they will not have been able to vote upon the proper number of legislators to which they and all others similarly situated are entitled to vote either on a basis of the proper number of legislators to which they are entitled under the Constitution of Alabama of 1901 or, in the alternative, to vote upon all candidates for membership in the legislature of Alabama in an election held at an at-large basis.

9. That defendants have taken preliminary steps toward preparation of ballots and voting machines for the conduct of the coming May 1st, May 15th and May 29th, 1962, democratic primary elections, and unless they are restrained and enjoined from holding such primary elections, the election of candidates of such primary election will result in a continuation of the mal-apportionment of the old Legislature as set out herein and in the amended com- [fol. 101] plaint filed in this cause.

George Peach Taylor

Sworn to and subscribed before me this the 29th day of March, 1962.

Timothy J. Norris, Notary Public.

[fol. 102] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
(NORTHERN DIVISION)

[Title omitted]

ORDER SETTING HEARING OF APPLICATION FOR INTERLOCUTORY INJUNCTION—March 30, 1962

On March 29, 1962 the plaintiffs filed their application for an interlocutory injunction. Subdivision (4) of Section 2284, Title 28 United States Code, provides that such an application "shall be given precedence and assigned for hearing at the earliest practicable day." This Court therefore has no discretion but is under a mandatory duty to set the application for interlocutory injunction for a hearing.

The application for interlocutory injunction is assigned for a hearing in the United States District Courtroom at Montgomery, Alabama, at 10:00 o'clock a.m. on the 14th day of April, 1962.

[fol. 103] Pursuant to subdivision (2) of the same Section 2284, it is directed that a copy of this order be served on the Governor of Alabama and on the Attorney General of Alabama.

Any evidence to be introduced at said hearing should be in the form of affidavits unless otherwise ordered or permitted.

While thus complying with their duty to set the application for interlocutory injunction for a hearing, the members of this Court, in view of the public importance of the case, as well as for the guidance of counsel, express their tentative but unanimous opinion that no injunction is required prior to the primary elections which are set for May 1 and May 29, 1962, in order for citizens of the State represented by the plaintiffs in this case to be accorded any constitutional rights asserted in time for the exercise of such rights at the general election in November 1962. In

the meanwhile, there is time for the Legislature of Alabama to comply with its duty prescribed by Sections 199 and 200 of the Constitution of 1901 of the State of Alabama.

> "Sec. 199. It shall be the duty of the legislature at its first session after the taking of the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of representatives and apportion them among the several counties of the state, according to the number of inhabitants in them, respectively; provided, that each county shall be entitled to at least one representative.
>
> "Sec. 200. It shall be the duty of the legislature at its first session after taking of the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of senators, and to divide the state into as many senatorial districts as there are senators, which districts shall be as nearly equal to each other in the number of inhabitants as may be, and each shall be entitled to one senator, and no more; and such districts, when formed, shall not be changed until the next apportioning session of the legislature, after the next decennial census of the United States shall have been taken; provided, that counties created after the next preceding apportioning session of the legislature may be attached to senatorial districts. No county shall be divided between two districts, and no district shall be made up of two or more counties not contiguous to each other."

[fol. 104] The members of this Court are of the tentative but unanimous opinion that no action on the part of this Court, which is not absolutely essential for the protection of any constitutional rights asserted in the complaint, should be taken before the Legislature of Alabama has had a further reasonable but prompt opportunity to comply with its duty under the Constitution of the State of Ala-

bama. Such action may make the issuance of any injunction by this Court unnecessary.

Done this the 30th day of March 1962.

Richard T. Rives, United States Circuit Judge;
Daniel H. Thomas, United States District Judge;
Frank M. Johnson, Jr., United States District Judge.

[fol. 105] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
(NORTHERN DIVISION)

[Title omitted]

MOTION OF DAVID J. VANN, ET AL. FOR LEAVE TO INTERVENE—Filed April 9, 1962

David J. Vann, Robert S. Vance and Richard P. Humphrey, Jr., described herein as interveners, respectfully move the Court for permission to intervene as plaintiffs in this action, individually and as representatives of the class hereinafter described, and as grounds therefore, state:

I

Each of the interveners is a citizen of the United States and is a resident citizen of, and registered voter and taxpayer in, Jefferson County, Alabama. Each is a member, and is Chairman, Vice-Chairman and Secretary respectively, of the Jefferson County Democratic Campaign Committee, a voluntary association of members of the Democratic Party of Alabama which encourages the active participation of Jefferson County citizens in the public affairs of their county and state. As such, said interveners and the Committee which they represent has a great interest in the failure of the citizens of Jefferson County to be fairly represented in the Legislature of Alabama.

II

As residents, citizens, taxpayers and duly qualified voters in Jefferson County, the interveners are members of the class described in the complaint which is so numerous as to make it impractical to bring all members before this [fol. 106] Court as nominal interveners. Each intervener will be affected by the Court's order in this proceeding and, as more fully will appear hereinafter, desires to present to the Court an alternative remedy for consideration by the Court.

III

The present Legislature of Alabama, as demonstrated by the Amended Complaint, is arbitrarily and unfairly apportioned among the counties so as to deprive the people residing in such counties, including the interveners who reside in the County of Jefferson, of their right to be fairly represented in said Legislature under an apportionment based on population as guaranteed by the Constitution of Alabama and so as to deprive such persons of rights guaranteed and protected by the Constitution of the United States as set forth in the Amended Complaint and in the Exhibits filed therewith.

IV

Interveners, assume that, unless the Legislature of Alabama is reapportioned by legislative action prior to the time when such remedy becomes necessary, this Court will devise a proper remedy to protect the right of all citizens of Alabama to constitutional representation in the State Legislature prior to the election of members to another Alabama Legislature. On this basis, the interveners therefore suggest that the Court should stay its hand until a date to be set by the Court in July, 1962, to give the Legislature of Alabama a full opportunity to abide by the Constitutions of Alabama and of the United States which the members of such Legislature have solemnly sworn to uphold.

[fol. 107] Wherefore, the Interveners hereby adopt the allegations of the Amended Complaint except those allegations of the second paragraph of part XV, and join

in the prayers thereof except insofar as such prayers would enjoin the primaries of the Democratic Party of Alabama now scheduled during the month of May, 1962. Interveners further pray under the prayer for general relief, and as an alternative to that set out in Prayer F of the Complaint, for further, but alternative specific relief, as follows:

Should the Legislature of Alabama fail to provide for reapportionment of said Legislature in accordance with the provisions of the Constitution of Alabama in time for the qualification of the candidates for election to membership in such Legislature in the general election to be held in November, 1962, that the Court enter an order prescribing a provisional plan of reapportionment within the standards specified in the Constitution of Alabama and directing that no person shall be qualified or certified, or have his name placed on a ballot, as a candidate for election as a member of the Legislature of Alabama in any primary or general election to be held in the State of Alabama after the effective date of such order, and that no person shall be certified as elected to membership in such Legislature unless elected in accordance with such provisional plan of reapportionment, unless and ~~until a permanent~~ plan of reapportionment shall have been adopted by a Legislature, all of the members of which have been elected under the provisions of such provisional plan of reapportionment, or by a constitutional convention called by such a provisionally reapportioned Legislature, or by a constitutional amendment proposed by such a provisionally reapportioned Legislature and adopted by the people of Alabama in accordance with the Constitution of Alabama.

[fol. 108] The Interveners respectfully pray that the Court will enter an order allowing their invention as aforesaid under the provisions of Rule 24 of the Federal Rules of Civil Procedure and 28 U.S.C. §2284.

David J. Vann, Robert S. Vance, C. H. Erskine Smith, Attorneys for the Interveners, 2100 Comer Building, Birmingham, Alabama.

[fol. 109] *Duly sworn to by David J. Vann (jurat omitted in printing).*

Service and Certificate of Service (omitted in printing).

[fol. 132] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
(NORTHERN DIVISION)
Civil Action No. 1744-N

M. O. SIMS, et al., Plaintiffs,

vs.

BETTYE FRINK, Secretary of State of the State of Alabama, et al., Defendants.

OPINION ON HEARING OF APPLICATION FOR INTERLOCUTORY INJUNCTION—April 14, 1962

Before Rives, Circuit Judge, and Thomas and Johnson, District Judges.

Per Curiam:

In the order setting for a hearing plaintiffs' application for interlocutory injunction, we expressed the view that Section 2284 of Title 28 United States Code placed upon this Court the mandatory duty to set the application for a hearing "at the earliest practicable day." The same principle, together with the importance of the case and the necessity for some effective action within a limited time, requires an early announcement of our views.

We remain of the same opinion that was expressed in the order setting the application for hearing, viz: until the Legislature has had a further reasonable but prompt opportunity to comply with its duty under Sections 199 and 200 of the Constitution of Alabama, this Court should take no action not absolutely essential for the protection of the constitutional rights asserted in the complaint; and no ruling before the primary elections of May 1962 appears essential.

The application for interlocutory injunction pertains to the conduct of both the primary elections of May 1962

and the general election of November 1962. That applica-
[fol. 133] tion is therefore continued and re-set for hearing at 10 o'clock a.m. on Monday, July 16, 1962. The hearing cannot be set for a much later date because, if this Court is to act effectively, some action must be taken in ample time before the general election of November 1962.

For the guidance of counsel and for such aid as we may be in solving the troublesome but important subject of this litigation, we make the following additional remarks:

(1) Under the opinion of the Supreme Court of the United States in *Baker* v. *Carr*, No. 6, October Term, 1961, decided March 26, 1962, it seems clear to us that: (a) this Court has jurisdiction of the present action, (b) the complaint as amended states a justiciable cause of action; (c) the plaintiffs have standing to challenge the Alabama apportionment statutes.

(2) We have no disposition to discourage the introduction of evidence by any party, and in the ordinary case our opinion as to whether the plaintiffs will be entitled to appropriate relief should await the introduction of evidence. However, we take judicial notice of the same facts which are well known to the Justices of the Supreme Court of Alabama and to the people of this State, as expressed on two different occasions in opinions of the Justices.

> "We judicially know that the population of the various counties of this state has changed during the years which have intervened since the Constitution of 1901 was adopted, so that the representation as provided in §§1 and 2 of Title 32, Code 1940, cannot be said to be on a population basis."

Opinion of the Justices of the Supreme Court of Alabama, No. 117, August 14, 1950, 47 So.2d 714, 717.

> "We know, and the people of this State know, that our Constitution says that it *shall* be the duty of the legislature to reapportion the legislature according to population after each decennial census and that this constitutional mandate of the Constitution of 1901 has never been complied with."

[fol. 134] Opinion of the Justices of the Supreme Court of Alabama, No. 148, July 11, 1955, 81 So.2d 881, 887.

(3) The controlling constitutional formula which runs throughout the Constitution of Alabama is thus expressed in the last sentence of Section 284 of said Constitution: "Representation in the legislature shall be based upon population, and such basis of representation shall not be changed by constitutional amendments." See also Sections 198 to 201, inclusive. If that formula is met, then there can be no valid objection under the equal protection clause or any other part of the Constitution of the United States, which is, of course, the supreme law of the Land, binding alike on this Court and on the Legislature of Alabama (Article VI, Clauses 2 and 3 of the Constitution of the United States). It is necessary that any action taken by the Legislature comply with constitutional standards, and it is important that such standards be met not halfheartedly but fully, because once there has been a legislative reapportionment, unless it so completely fails to meet constitutional standards that it must be set aside by court order, it will not be subject to alteration until the next session of the Legislature after the decennial census in 1970 (Constitution of Alabama, Section 198).

(4) In the event that the Legislature of Alabama complies with its duty before the next hearing, and this Court can so find, then no further action will be needed in this case and the cases can be dismissed. If the Legislature does not act, or if its action does not meet constitutional standards, then we will be under a clear duty to take some action in time to take effect before the general election of November 1962. Such action, however, should be held to the minimum that is necessary for the citizens of Alabama to be accorded their constitutional rights.

[fol. 135] (5) To that end, it is fair to advise the parties of our present thinking that we would then follow the plan suggested in the concurring opinion of Mr. Justice Clark in *Baker* v. *Carr, supra*:

"One plan might be to start with the existing assembly districts, consolidate some of them, and award the seats thus released to those counties suffering the most egregious discrimination. Other possibilities are present and might be more effective. But the plan here suggested would at least release the stranglehold now on the Assembly and permit it to redistrict itself."

(6) While retaining jurisdiction, we could then defer further decision or action to afford the newly elected Legislature full opportunity to heed the constitutional mandate to reapportion. When that has been done the duty resting on us will be at an end and the case can be dismissed.

This the 14th day of April, 1962.

Richard T. Rives, United States Circuit Judge,
Daniel H. Thomas, United States District Judge,
Frank M. Johnson, Jr., United States District Judge.

[fol. 136] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

[Title omitted]

ORDER GRANTING LEAVE TO INTERVENE BY DAVID J. VANN, ET AL.—April 20, 1962

This cause is now submitted upon the motion of David J. Vann, Robert S. Vance and Richard P. Humphrey, Jr., filed herein on April 9, 1962, pursuant to Rules 24(b) and 24(c), Federal Rules of Civil Procedure, wherein said movants seek permission of this Court to intervene in this action as plaintiffs.

Upon consideration of said motion and pursuant to the authority of §2284, Title 28, United States Code, it is the Order, Judgment and Decree of the undersigned, as one

of the judges designated for this court, that the motion of the above-named movants, seeking leave to intervene in this cause as parties plaintiff, be and the same is hereby granted.

Done, this the 20th day of April, 1962.

Frank M. Johnson, Jr., United States District Judge.

[fol. 137] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

[Title omitted]

ORDER DENYING MOTIONS TO DISMISS—April 20, 1962

This cause is now submitted on the following motions filed herein by the defendants as hereinafter indicated, wherein said defendants seek to have this Court dismiss this action as to each of them so moving:

(1) The motion to dismiss filed on September 12, 1961 and refiled on February 27, 1962, by Sam Engelhardt, Chairman of the Alabama State Democratic Executive Committee, and H. G. Rains, Secretary of the Alabama State Democratic Executive Committee.

(2) The first, second, third, fourth, and fifth numbered paragraphs in the answer of Bettye Frink, Secretary of State of the State of Alabama, each being considered and treated as a motion to dismiss and the same being filed herein on September 25, 1961.

[fol. 138] (3) The motion to dismiss filed herein on September 6, 1961, by Harrell Hammonds, Judge of Probate of Lowndes County, Alabama.

(4) The first, second, third, fourth, and fifth defenses in the answer of MacDonald Gallion, in his capacity as Attor-

ney General of the State of Alabama, each being considered and treated as a motion to dismiss and being filed herein on September 1, 1961.

Upon consideration of each of the above-enumerated motions and pursuant to the authority of §2284, Title 28, United States Code, it is the Order, Judgment and Decree of the undersigned, as one of the judges designated for this court, that each of said motions be and each is hereby denied.

Done, this the 20th day of April, 1962.

Frank M. Johnson, Jr., United States District Judge.

[fol. 139] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

[Title omitted]

MOTION OF JOHN W. McCONNELL, ET AL. FOR LEAVE TO INTERVENE—Filed June 27, 1962

John W. McConnell, Jr., Joseph N. Langan, William M. Williams, Jr. and Garet Van Antwerp, described herein as Intervenors, respectfully move the Court for permission to intervene as Plaintiffs in this action, individually and as representatives of the class hereinafter described, and as grounds therefor, state:

I.

Each of the Intervenors is a citizen of the United States, a resident citizen of and registered voter and taxpayer in Mobile County, Alabama, and a member of the Citizens Committee for Representative Government on a Fair Basis, an unincorporated association. As such, said Intervenors have a great interest in the failure of the citizens of Mobile County to be fairly represented in the Legislature of Ala-

bama. As residents, citizens, taxpayers and duly qualified voters in Mobile County and as members of said association, the Intervenors are members of a class, which is so numerous as to make it impractical to bring all members before this Court as nominal Intervenors. Each Intervenor will be affected by the Court's Order in this proceeding and, as more fully will appear hereinafter, desires to present to the Court an alternative remedy for consideration by the Court.

[fol. 140]

II.

The present Legislature of Alabama, as demonstrated by the Amended Complaint, is arbitrarily and unfairly apportioned among the counties of this State, so as to deprive the people residing in such counties, including the Intervenors who reside in the County of Mobile, of their right to be fairly represented in said Legislature, under an apportionment based on population, as guaranteed by the Constitution of Alabama, and so as to deprive such persons of rights guaranteed and protected by the Constitution of Alabama, specifically, Sections 6, 35 and 36 of said Constitution, and by the Constitution of the United States, as set forth in the Amended Complaint and in the Exhibits filed therewith, which arbitrary and unfair apportionment of representation constitutes an usurpation and oppression of the citizens of this State, including the Intervenors, in the enjoyment of life, liberty and property.

III.

That to further illustrate inequalities of the present unconstitutional apportionment of the Legislature of the State of Alabama, as set out in the Amended Complaint, the County of Mobile has a population of approximately 314,000, according to the 1960 Federal Census, and has three (3) members of the House of Representative and one (1) member of the Senate of the State of Alabama. Each Representative of Mobile County, therefore, represents approximately 104,000 people; while the Senator from Mobile County represents approximately 314,000 people.

IV.

Wherefore, the Intervenors hereby adopt the allegations of the Amended Complaint and of the Motion for Leave to Intervene, filed herein by David J. Vann, Robert S. Vance and Richard P. Humphrey, Jr., and join in the prayers [fol. 141] thereof, including the alternative to Prayer F of the Complaint as filed in the Motion for Leave to Intervene.

The Intervenors respectfully pray that the Court will enter an Order allowing their intervention, as aforesaid, under the provisions of Rule 24 of the Federal Rules of Civil Procedure, and 28 U.S.C., Section 2284.

John W. McConnell, Jr., Attorney for the Intervenors.

1101 Merchants National Bank Building, Mobile, Alabama.

Certificate of Service (omitted in printing).

[fol. 142] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
(NORTHERN DIVISION)

[Title omitted]

MOTION TO AMEND COMPLAINT—Filed June 28, 1962

Plaintiffs move the Court for leave to amend their complaint on file herein by adding thereto in the prayer for relief heretofore designated as Paragraph XIV, the following:

H. That this Court enter an order provisionally reapportioning the House of Representatives of Alabama and provisionally redistricting the Senate of Alabama and in such order start with the existing apportionment of members of the House of Representatives and existing senatorial districts, alter or consolidate some of

[fol. 143] them, and award the seats thus released to those counties suffering the most egregious discrimination to the end that the strangle-hold now on the Legislature be released in order to permit the said Legislature to reapportion and redistrict itself at a later date, while retaining jurisdiction of this cause, then defer further decision or action in order to afford the newly elected Legislature of 1963 full opportunity to heed the constitutional mandate to reapportion and redistrict and, in order to enforce its decree and after such alteration and consolidation that this Court issue an injunction enjoining and restraining the defendants from doing any act or thing with respect to the conduct of an election of members of the Legislature of Alabama in the November, 1962, general election except in accordance with the system of provisional reapportionment and redistricting by alteration and consolidation adopted by this Court.

The grounds of this motion are that the Legislature of Alabama is presently assembled in special session but appears to be giving no serious consideration to any act reapportioning the House of Representatives and redistricting the Senate of the Legislature of Alabama on a population basis prior to the November, 1962, general election in accordance with the Opinion On Hearing On Application For Interlocutory Injunction previously issued herein and more particularly, the remarks for guidance of counsel contained therein.

Charles Morgan, Jr., 1512 Comer Building, Birmingham 3, Alabama;

George Peach Taylor, 927 Brown-Marx Building, Birmingham 3, Alabama, Attorneys for Plaintiffs.

[fol. 144] Certificate of Service (omitted in printing).

[fol. 145] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

NORTHERN DIVISION

[Title omitted]

MOTION FOR LEAVE TO AMEND COMPLAINT IN INTERVENTION—Filed June 28, 1962

The following officers of the Jefferson County Democratic Campaign Committee, David J. Vann, Robert S. Vance, and Richard P. Humphrey, Jr., have heretofore, by order of this Court, been granted leave to intervene as parties plaintiff in this action. These intervening plaintiffs hereby respectfully move the Court for an order granting leave to these interveners to amend the prayer of their complaint in intervention so as to be more specific in the relief requested thereby. These intervening plaintiffs further move the Court for an order declaring that their complaint in intervention shall be treated as so amended without the necessity of further pleading:

1. The intervening plaintiffs pray that the Court will, following the hearing set on July 16, 1962, grant a preliminary injunction against the defendants requiring that the members of the House of Representatives of the State of Alabama to be elected in the November General elections shall be chosen according to the plan set out as Exhibit "A" to this motion; which plan results in the transfer of only 19 seats in such House of Representatives from counties which are now overrepresented to counties which are now egregiously underrepresented, leaves 87 seats in the House of Representatives wholly unaffected and changes in no way the representation afforded to 42 of the 67 counties [fol. 146] of Alabama; and which plan follows the Method of Equal Proportions under which 67 of the seats in said House of Representatives are assigned one to each county on a purely geographical basis, without regard to population at all, and under which the 39 remaining seats are assigned on a basis which reduces to a minimum the discrepancies between the ratios of representation among those counties which, by reason of their population, are each entitled to share in the assignment of these additional

members in addition to their one geographically assigned member.

2. The intervening plaintiffs pray that said preliminary injunction also require that the members of the Senate of the State of Alabama to be elected in the November General Election shall be elected according to the plan set out in Exhibit "B" to this motion, which plan leaves unaffected 17 of the present seats in the Senate of Alabama, merges 18 of the present districts to form 9 provisional, or temporary, multi-county districts, and assigns the 9 additional seats to provisional districts which are coextensive with the entire boundaries of those counties now most egregiously underrepresented.

3. The intervening plaintiffs further pray that, after entering such preliminary injunction, the Court will retain jurisdiction for the purpose of modifying such preliminary injunction and for the purpose of further hearing for the granting of permanent relief should both the present Legislature, and the provisionally, or temporarily, reapportioned Legislature to be elected, fail or refuse to permanently reapportion the Legislature of Alabama in accordance with the requirements of the applicable provisions of the Constitution of Alabama as interpreted to comply with the provisions of the Fourteenth Amendment to the Constitution [fol. 147] of the United States.

4. Intervening plaintiffs also pray for such other further and different relief as to which they may, in good conscience, be entitled.

In support of the aforesaid amended prayers the intervener plaintiffs aver:

(1) The plans proposed result in the minimum changes which are necessary to correct egregious malapportionment.

(2) The effecting of these plans by order of this Court will result in no irreparable injury to any citizen of Alabama, but will assure such citizens a fairly apportioned Legislature for the first time in over fifty years.

David J. Vann, Robert S. Vance, C. H. Erskine Smith, Attorneys for Intervening Plaintiffs.

Certificate of Service (omitted in printing).

TEMPORARY OR PROVISIONAL REAPPORTIONMENT OF THE HOUSE OF REPRESENTATIVES

Each of the counties of Alabama shall have the number of representatives respectively indicated below:

Seventeen Members - Jefferson (+) (37,345) *
Eight Members - Mobile (+) (39,287)
Four Members - Montgomery (=) (42,302)
Three Members each - Calhoun (+) (31,959), Etowah (+) (32,327), Madison (+) (39,116), Tuscaloosa (+) (36,347).
Two Members each - - Dallas (-) (28,333), Lauderdale (=) (30,811), Morgan (=) (30,227), Talladega (=) (32,747), Walker (=) (27,205).
One Member each - Autauga (=) (18,739), Baldwin (=) (49,088), Barbour (-) (24,700), Bibb (=) 14,357, Blount (=) (25,449), Bullock (-) (13,462), Butler (-) (24,560), Chambers (-) (37,828), Cherokee (=) (16,303), Chilton (=) (25,693), Choctaw (=) (17,870), Clarke (-) (25,738), Clay (=) (12,400), Cleburne (=) (10,911), Coffee (=) (30,583), Colbert (=) (46,506), Conecuh (=) (17,762), Coosa (=) (10,726), Covington (=)(35,631), Crenshaw (=) (14,909), Cullman (=) (45,572), Dale (=) (31,066), DeKalb (=) (41,417), Elmore (-) (30,524), Escambia (=) (33,511), Fayette (=) (16,148), Franklin (=) (21,988), Geneva (=) (22,310), Greene (=) (13,600), Hale (-) (19,537), Henry (-) (15,286), Houston (=) (50,718), Jackson (-) (36,681), Lamar (=) (14,271), Lawrence (=) (24,501), Lee (-) (49,754), Limestone (=) (36,513), Lowndes (-) (15,417), Macon (=) (26,717), Marengo (-) (27,098), Marion (=) (21,837), Marshall (=) (48,018), Monroe (=) (22,372), Perry (-) (17,358), Pickens (=) (21,882), Pike (-) (25,987), Randolph (=) (19,477), Russell (-) (46,351), St. Clair (=) (25,388), Shelby (=) (32,132), Sumter (-) (20,041), Tallapoosa (-) (35,007), Washington (=) (15,372), Wilcox (-) (18,739), Winston (=) (14,858).

(=) - Present representation unaffected - 42 counties.
(+) - Representation increased - 6 counties.
(-) - Representation decreased - 19 counties.

* Figures in parentheses indicate the number of citizens each representative will speak for under this proposal as shown by 1960 census.

[fol. 148]

EXHIBIT

[fol. 149]

EXHIBIT "B" TO MOTION

See Opposite ☞

TEMPORARY OR PROVISIONAL REAPPORTIONMENT OF THE SENATE

(Retains 17 Districts; merges 18 Districts to form 9 provisional Districts; assigns new 9 seats to counties now most egregiously affected.)

Variations shown are varitions from "perfect district" of 93,335.

DISTRICT	POPULATION	VARIATION
FIRST: * Lauderdale Limestone	98,135	+ 4,800
SECOND: * Lawrence Morgan	84,955	- 8,380
THIRD: * Blount,Cullman Winston	85,879	- 7,456
FOURTH: * Madison	117,348	+24,013
FIFTH: * Jackson Marshall	84,699	- 8,636
SIXTH: * Etowah St. Clair	122,368	+29,033
SEVENTH: * Calhoun	95,878	+ 2,543
EIGHTH: Talladega Clay, Coosa	88,621	- 4,714
NINTH: DeKalb,Cherokee Cleburne Randolph	88,108	- 5,227
TENTH: Chambers,Elmore Tallapoosa	103,359	+10,024
ELEVENTH: * Tuscaloosa	109,047	+15,712
TWELFTH: * Fayette,Lamar Walker	84,630	- 8,705
THIRTEENTH: * Jefferson #1	90,695	- 2,640
FOURTEENTH:		
TWENTY-FIRST: * Baldwin,Monroe Escambia	104,971	+11,636
TWENTY-SECOND: Jefferson #2	90,695	- 2,640
TWENTY-THIRD: Perry,Bibb, Dallas	88,382	- 4,953
TWENTY-FOURTH: Pickens, Hale, Greene,Sumter, Choctaw	92,930	- 405
TWENTY-FIFTH: Marengo, Washington, Clarke,Wilcox	86,947	- 6,388
TWENTY-SIXTH: Lowndes Crenshaw Coffee Pike	86,896	- 6,439
TWENTY-SEVENTH: * Lee Russell	96,105	+ 2,770
TWENTY-EIGHTH: * Montgomery #1	84,605	- 8,730
TWENTY-NINTH; Montgomery #2	84,605	- 8,730
THIRTIETH: Geneva,Henry Houston	88,314	- 5,021
THIRTY-FIRST: * Colbert Franklin Marion	90,331	- 3,004
THIRTY-SECOND: Macon,Dale		

DISTRICT	POPULATION	VARIATION
FIRST: * Lauderdale Limestone	98,135	+ 4,800
SECOND: * Lawrence Morgan	84,955	- 8,380
THIRD: * Blount, Cullman Winston	85,879	- 7,456
FOURTH: * Madison	117,348	+24,013
FIFTH: * Jackson Marshall	84,699	- 8,636
SIXTH: * Etowah St. Clair	122,368	+29,033
SEVENTH: * Calhoun	95,878	+ 2,543
EIGHTH: Talladega Clay, Coosa	88,621	- 4,714
NINTH: DeKalb, Cherokee Cleburne Randolph	88,108	- 5,227
TENTH: Chambers, Elmore Tallapoosa	103,359	+10,024
ELEVENTH: * Tuscaloosa	109,047	+15,712
TWELFTH: * Fayette, Lamar Walker	84,630	- 8,705
THIRTEENTH: * Jefferson #1	90,695	- 2,640
FOURTEENTH: Jefferson #2	90,695	- 2,640
FIFTEENTH: * Shelby, Chilton Autauga	76,564	-16,771
SIXTEENTH: Jefferson #3	90,695	- 2,640
SEVENTEENTH: * Butler, Conecuh Covington	77,953	-15,382
EIGHTEENTH: Jefferson #4	90,695	- 2,640
NINETEENTH: Jefferson #5	90,695	- 2,640
TWENTIETH: Jefferson #6	90,695	- 2,640
TWENTY-FIRST: * Baldwin, Monroe Escambia	104,971	+11,636
TWENTY-SECOND: Jefferson #7	90,695	- 2,640
TWENTY-THIRD: Perry, Bibb, Dallas	88,382	- 4,953
TWENTY-FOURTH: Pickens, Hale, Greene, Sumter, Choctaw	92,930	- 405
TWENTY-FIFTH: Marengo, Washington, Clarke, Wilcox	86,947	- 6,388
TWENTY-SIXTH: Lowndes Crenshaw Coffee Pike	86,896	- 6,439
TWENTY-SEVENTH: * Lee Russell	96,105	+ 2,770
TWENTY-EIGHTH: * Montgomery #1	84,605	- 8,730
TWENTY-NINTH; Montgomery #2	84,605	- 8,730
THIRTIETH: Geneva, Henry Houston	88,314	- 5,021
THIRTY-FIRST: * Colbert Franklin Marion	90,331	- 3,004
THIRTY-SECOND: Macon, Dale Bullock Barbour	95,945	+ 2,610
THIRTY-THIRD: * Mobile	104,767	+11,432
THIRTY-FOURTH: Mobile	104,767	+11,432
THIRTY-FIFTH: Mobile	104,767	+11,432

* - Present Senate Districts.

[fol. 150] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

[Title omitted]

ORDER GRANTING MOTION TO AMEND COMPLAINT—July 2, 1962

This cause is now submitted upon the motion of the plaintiffs, filed herein on June 28, 1962, by and through their attorneys of record, seeking leave of this Court to amend their complaints as last amended by adding thereto, in the prayer for relief, Subparagraph "H" to Paragraph XIV.

Upon consideration of said motion, and pursuant to the authority of Section 2284, Title 28, United States Code, it is the Order, Judgment and Decree of the undersigned, as one of the judges designated for this court, that the motion of the plaintiffs, seeking leave to amend their complaint as last amended by adding Subparagraph "H" to Paragraph XIV, be and the same is hereby granted.

Done, this the 2nd day of July, 1962.

Frank M. Johnson, Jr., United States District Judge.

[fol. 151] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

[Title omitted]

ORDER GRANTING LEAVE TO INTERVENE BY JOHN W. McCONNELL, JR., ET AL.—July 2, 1962

This cause is now submitted upon the motion of John W. McConnell, Jr., Joseph N. Langan, William M. Williams, Jr., and Garet Van Antwerp, filed herein on June 27, 1962, pursuant to Rule 24(b) and 24(c), Federal Rules of Civil Procedure, wherein said movants seek permission of this Court to intervene in this action as plaintiffs.

Upon consideration of said motion and pursuant to the authority of Section 2284, Title 28, United States Code, it is the Order, Judgment and Decree of the undersigned, as one of the judges designated for this court, that the motion of the above-named movants, seeking leave to intervene in this cause as parties plaintiff, be and the same is hereby granted.

Done, this the 2nd day of July, 1962.

Frank M. Johnson, Jr., United States District Judge.

[fol. 152] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

[Title omitted]

ORDER GRANTING LEAVE TO AMEND COMPLAINT IN INTERVENTION—July 2, 1962

This cause is now submitted upon the motion of David J. Vann, Robert S. Vance, and Richard P. Humphrey, Jr., intervening plaintiffs, seeking leave of this Court to amend the intervention complaint allowed to be filed in this cause by order of this Court dated April 20, 1962.

Upon consideration of said motion, and pursuant to the authority of Section 2284, Title 28, United States Code, it is the Order, Judgment and Decree of the undersigned, as one of the judges designated for this court, that the motion of the above-named intervenors, seeking leave to amend their complaint in intervention, be and the same is hereby granted.

Done, this the 2nd day of July, 1962.

Frank M. Johnson, Jr., United States District Judge.

[fol. 153] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

[Title omitted]

MOTION FOR A SUMMARY JUDGMENT BY PLAINTIFFS—
Filed July 2, 1962

Plaintiffs move the Court as follows:

1. That it enter, pursuant to Rule 56 of the Federal Rules of Civil Procedure, a summary judgment in plaintiffs' favor for the relief demanded in Paragraph XIV-H. of the amended complaint as last amended on the ground that there is no genuine issue as to any material fact and that plaintiffs are entitled to a judgment as a matter of law; or, in the alternative,

2. If summary judgment is not rendered in plaintiffs' favor upon the whole case or for all the relief asked and a [fol. 154] trial is necessary, that the Court, at the hearing on the motion, by examining the pleadings and the evidence before it and by interrogating counsel, ascertain what material facts are actually and in good faith controverted, and thereupon make an order specifying the facts that appear without substantial controversy and directing such further proceedings in the action as are just.

This motion is based upon all other pleadings and affidavits filed in this Court in this proceeding.

Charles Morgan, Jr., 1512 Comer Building, Birmingham 3, Alabama;

George Beach Taylor, 927 Brown-Marx Building, Birmingham 3, Alabama, Attorneys for Plaintiffs.

Jerome A. Cooper, 1329 Brown-Marx Building, Birmingham 3, Alabama, Attorney for Intervenors.

Certificate of Service (omitted in printing).

[fol. 155] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

[Title omitted]

JOINDURE IN MOTION FOR SUMMARY JUDGMENT—
Filed July 3, 1962

The following officers of the Jefferson County Democratic Campaign Committee, David J. Vann, Robert S. Vance, and Richard P. Humphrey, Jr., who have heretofore, with leave of Court, intervened as plaintiffs in this class action, do hereby respectfully join in, and support, the plaintiff's motion for a summary judgment to secure reapportionment according to the standards provided in the Constitution of Alabama.

The interveners assign as additional grounds for such relief and for other relief prayed in the complaint as amended and as adopted by the interveners the following:

(1) At the time of the ratification of the Tenth Amendment to the Constitution of the United States on December 15, 1791; the government of the State of Alabama did not exist. Following the Articles of Cession entered into by and between the State of Georgia and the United States in 1802, there was no state government exercising sovereignty over the area now constituting the State of Alabama. Except to the extent that such powers were exercised by the United States and territorial governments created by it, all of the sovereign powers reserved by the Tenth Amendment "to the states respectively, *or to the people*" were therefore vested directly in the people of the [fol. 156] Alabama Territory and not in any organized state government.

(2) The people of the Alabama Territory were authorized by Act of Congress on March 2, 1819, to form a state constitution providing for a republican form of government. 3 Stat. 489. By convention the people adopted such

a constitution on July 5, 1819, which was approved by the Resolution of the Congress admitting the State of Alabama to the Union on December 14, 1819. 3 Stat. 608. This Constitution provided in its Declaration of Rights, Article I, Section 2, "That all political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit." This recognition of the ultimate sovereignty of the people has been retained in all subsequent constitutions of the state and appears as Section 2 of the Constitution of Alabama, 1901. Except for those sovereign powers delegated with limitations to their state government, all other powers reserved to them by the Tenth Amendment remain vested in the people of Alabama.

(3) The Constitution of Alabama, 1819, as a part of its delegation of limited powers to the General Assembly provided for therein, as one of the specific conditions upon the exercise of the powers delegated, directed that the General Assembly should periodically reapportion itself to conform to changes in population of the various existing counties and of those which the Legislature was authorized to form from time to time. These directions have been preserved in substantial part in every subsequent consti- [fol. 157] tution or purported constitution providing for the government of the State of Alabama, and now appear as Sections 198, 199, 200 and 201, Constitution of Alabama, 1901.

(4) The Constitution of Alabama, 1901, requires that both houses of the Legislature (formerly called the General Assembly) be apportioned on the basis of population with the following exceptions: The House of Representatives is required to be apportioned primarily on a basis of geography in that, of the 106 members now authorized, 67 are apportioned one to each county, regardless of the sparsity of a county's population, thereby leaving only 39 to be apportioned on a basis of population; the Senate is required to be apportioned "as nearly as may be" on a pure population basis except for its prohibitions against gerrymandering which require that when a district is composed of two or more counties no county may be divided, and all counties in a district must be contiguous. This results in a tradi-

tional system of practical checks and balances: the sparsely populated counties are guaranteed a working majority in the House of Representatives as protection from majority abuse; the more densely populated counties are assured of such protection from minority abuse as their numbers from time to time may afford; no minority can acquire such an artificial stranglehold control of legislative processes as to effectively deny any citizen an effective voice in support of reasoned proposals made to those high officials exercising delegated law-making powers over him.

(5) The due process guarantee of the Fourteenth Amendment not only requires the Acts of the Legislature comply with standards of fairness taking into account all of the circumstances, including the provisions of the Constitution [fol. 158] of Alabama, such guarantee also further requires the Legislature of Alabama to follow the established known procedures provided for in the Constitution of Alabama. The delegated power to apportion the membership of the Legislature can be lawfully exercised only in accordance with the procedures established therefor. Any action by the Legislature to apportion by other procedures, or to alter those procedures, other than by constitutional convention as provided in Section 284 and Amendment XXIV of such Constitution, constitutes an unlawful usurpation of sovereign powers reserved to the people of Alabama by the Tenth Amendment to the Constitution of the United States, which powers the people, by their constitutions, have perpetually reserved unto themselves for the purpose of protecting and guaranteeing to themselves and their posterity the blessing and benefits of effective, responsive and ordered self-government in the form of a representative democracy exercising limited delegated powers, or, in other words, a republican form of government.

David J. Vann, Robert S. Vance, C. H. Erskine Smith, Attorneys for Intervening Plaintiffs.

Certificate of Service (omitted in printing).

[fol. 159] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

[Title omitted]

ORDER RE MOTION FOR SUMMARY JUDGMENT, ETC.
—July 5, 1962

This cause is now submitted upon the motion for summary judgment, filed herein on July 2, 1962, by the plaintiffs and certain intervenor-plaintiffs, and this cause is further submitted upon the motion of certain other intervenor-plaintiffs, filed herein on July 3, 1962, seeking leave of this Court to join in the said motion for summary judgment.

Upon consideration of said motions, and pursuant to the authority of Section 2284, Title 28, United States Code, it is the Order and Direction of the undersigned, as one of the judges designated for this court, that the motion for summary judgment and the motion for joinder in the motion for summary judgment will be deemed submitted to this Court on Monday, July 16, 1962, at 10:00 a.m.

It is the further Order and Direction of the undersigned, as one of the judges designated for this court and pursuant to Section 2284, Title 28, United States Code, that all parties are hereby notified that any evidence, either oral or documentary, considered by the parties to be in support of or opposition to said motions, must be filed with this Court within 10 days from the date of the Order of this Court.

This Order is entered by the undersigned on this the 5th day of July, 1962.

Frank M. Johnson, Jr., United States District Judge.

[fol. 164] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

[Title omitted]

MOTION FOR LEAVE TO AMEND COMPLAINT IN INTERVENTION—
Filed July 12, 1962

The following citizens of the United States, resident citizens and registered voters and taxpayers in Mobile County, Alabama, and members of the Citizens Committee for Representative Government on a Fair Basis, John W. McConnell, Jr., Joseph N. Langan, William M. Williams, Jr. and Garet Van Antwerp, have heretofore, by order of this Court, been granted leave to intervene as parties plaintiff in this action. These intervening Plaintiffs hereby respectfully move the Court for an order (1) granting leave to these Intervenors to amend the Complaint in Intervention and the Prayer thereof, so as to be more specific in the allegations made therein and the relief requested thereby and (2) declaring that their Complaint in Intervention shall be treated as so amended without the necessity of further pleadings, in the following particulars:

V.

These Intervenors adopt and assign, as additional grounds for the relief prayed in the Complaint, as amended and as adopted by the Intervenors, the grounds set out in the Joinder in Motion for Summary Judgment heretofore [fol. 165] filed herein by Intervenors David J. Vann, et al., and except as to ¶(4) thereof, and in addition, as to ¶(2) and ¶(5) thereof, allege as follows:

(2) That Section 36, Article I, Constitution of Alabama of 1901 (herein referred to as the "Constitution"), specifically provides that everything in the Declaration of Rights of said Constitution is excepted out of the general powers of government and shall forever remain inviolate, among

which are the rights declared by Section 35 that the purpose and object of government is to preserve the equality of citizens in public and private rights.

(5) The Fourteenth Amendment to the Constitution of the United States following the Tenth Amendment thereof is therefore a limitation on the exercise of the powers reserved by the Tenth Amendment to the states or to the people. Thus, no state, acting either through its legislative body or through its people as by amendment to the state's constitution or by constitutional convention may deny to any person within its jurisdiction the equal protection of the laws. The Constitution in establishing population as the basis for representation in *both* houses of the Legislature recognized and established in Alabama this necessity for equality and this cannot be altered in either house of such Legislature without violating the Fourteenth Amendment.

Wherefore, the Intervenors hereby amend the prayers for relief, as contained in their original Motion for Leave to Intervene by adding thereto the following prayers:

I. Intervenor-Plaintiff demand that the Court adjudge and declare:

(1) That the present apportionment of the House of Representatives and of the Senate of the Legislature of the State of Alabama violates the provisions of Section 35, Article I, of the Constitution;

[fol. 166] (2) That the proviso contained in Section 199, Article IX, of the Constitution ("provided, that each county shall be entitled to at least one representative") does not mean that each county acting alone must elect the one representative to which such county is entitled, but that each county is entitled to at least one representative who resides in said county, although such representative may be elected by voters of such county in conjunction with voters of other counties;

(3) That the proviso of Section 199, Article IX ("provided, that each county shall be entitled to at least one

representative") is repugnant with and subject to the provisions of Section 198, Article IX and Section 284, Article XVIII, as amended by Amendment XXIV of the Constitution, requiring that representation shall be based upon population;

(4) That the provision in Section 200, Article IX, of the Constitution that "No county shall be divided between two districts, and no district shall be made up of two or more counties not contiguous to each other" does not prevent the division of a county into two or more districts where the districts are wholly within the county being divided;

(5) That Section 202, Article IX, of the Constitution, by reason of the passage of time and the change of population, violates the Fourteenth Amendment of the Constitution of the United States in that it denies to the citizens of the State of Alabama the equal protection of the laws;

(6) That Section 203, Article IX of the Constitution, by reason of the passage of time and the change in population, violates the Fourteenth Amendment to the Constitution of the United States in that it denies to the citizens of the State of Alabama the equal protection of the laws;

[fol. 167] (7) That population as the basis of representation in the House of Representatives and in the Senate of the Legislature of the State of Alabama may not be changed by Constitutional Amendment without violating Section 36, Article I, and Section 284, Article XVIII, as amended by Amendment XXIV, of the Constitution;

(8) That basing representation in either the House of Representatives or the Senate of the Legislature of Alabama on any factor other than population would violate the provisions of the Fourteenth Amendment of the Constitution of the United States in that it would deny to the citizens of the State of Alabama the equal protection of the laws;

(9) That Section 1, Title 32, Code of Alabama, as adopted by the General Session of the Alabama Legislature in 1941, violates Sections 198 and 199, Article IX, of the Constitu-

tion and the Fourteenth Amendment of the Constitution of the United States;

(10) That Section 2, Title 32, Code of Alabama, as adopted by the General Session of the Alabama Legislature in 1941, violates Section 200, Article IX, of the Constitution and the Fourteenth Amendment of the Constitution of the United States;

(11) That the method of equal proportions (the method whereby the difference between the representation of any two districts is the smallest possible when measured both by the relative difference in the average population per representative and by the relative difference in the individual share in a representative, which is computed by means of a priority list obtained by dividing the population of the district by the geometric means of successive number of representatives, which is expressed by the following equation: P (priority list figure) equals population of any [fol. 168] district (A) divided by the geometric mean of its next higher assignment (k) and its present assignment (k-1), or P equals A divided by the square root of k (k-1), best satisfies state and federal constitutional requirements for equality in representation and for maintaining population as a basis for representation;

(12) That the inaction of the Legislature of the State of Alabama, after the Federal Decennial Census in 1910, 1920, 1930, 1940, 1950 and 1960 violates Section 35, Article I, of the Constitution, by depriving the citizens of the State of Alabama the enjoyment of life, liberty and property and resulting in usurpation and oppression by the State of Alabama of such citizens and violates the Fourteenth Amendment of the Constitution of the United States by depriving the citizens of the State of Alabama the equal protection of the laws;

(13) That, if the provision of Section 200, Article IX, of the Constitution ("No county shall be divided between two districts") prohibits the division of a county into two or more senatorial districts, then the number of senators in the Senate of the Alabama Legislature should be that num-

ber between 27 and 35 as required by Section 197, Article IX of the Constitution, giving least disparity between the senatorial district having the largest population and the senatorial district having the smallest population; and

(14) That the effective date of any reapportionment act adopted by the Legislature of the State of Alabama or proposed in any constitutional amendment by the Legislature of the State of Alabama may not be delayed beyond the first general election following the adjournment of the Legislature at which enacted.

J. That this Court, following the hearing set on July 16, 1962, will enter an Order granting a preliminary injunction against the Defendants, applicable to the 1962 General Election in the State of Alabama, and any and all primary [fol. 169] elections or other selections of legislative candidates by political parties in the State of Alabama for said General Election, requiring

(a) That the members of the House of Representatives of the State of Alabama and of the Senate of the State of Alabama be elected by vote of the state at large, with the candidates therefor to run by numbered positions, as required by Act No. 221 adopted at the Special Session of the Alabama Legislature in 1961;

or

(b) That the members of the House of Representatives of the State of Alabama and of the Senate of the State of Alabama be elected by vote of the state at large, with the candidates therefor to run by numbered positions, as required by Act No. 221 adopted at the Special Session of the Alabama Legislature in 1961, subject to the following conditions:

(i) the candidates for the House of Representatives to be residents of the various counties of the State of Alabama in accordance with Exhibit "A" attached hereto and made a part hereof as if set out in full herein, and

(ii) the candidates for the Senate to be residents of the various existing senatorial districts in accord-

ance with Exhibit "B" attached hereto and made a part hereof as if set out in full herein, with the 35 candidates, in the 44 positions, receiving a plurality in each position and the highest votes received among the 44 positions to be elected.

And said Intervening Plaintiffs do hereby respectfully join in and support the Plaintiff's Motion for a Summary Judgment to secure reapportionment according to the standards provided in the Constitution of Alabama, subject, however, in all respects to the requirements of the Fourteenth Amendment to the Constitution of the United States.

The grounds of this Motion are those set out in all pleadings and affidavits filed in this Court in this proceeding by [fol. 170] Plaintiff and Intervening Plaintiffs and on the further ground that the Legislature of Alabama is presently assembled in special session for the sole purpose of apportioning the members of the House of Representatives and of the Senate of the State of Alabama, as required by law, but appears not only to be giving no serious consideration to any act for such purpose that complies with the requirements of the Constitution of the State of Alabama and of the Constitution of the United States, but to be misusing its power and authority and its present malapportioned and unrepresentative basis to enact laws and to propose constitutional amendments to perpetuate the evils of its omission to follow the Constitutional mandates to reapportion itself and the oath of office of its respective members to abide by and to support the Constitution of the United States and the Constitution of the State of Alabama, and to faithfully and honestly discharge the duties of the office of a member of the Legislature, which includes the duty and mandate to reapportion itself.

John W. McConnell, Jr., Attorney for Intervening Plaintiffs.

Of Counsel:

1101 Merchants National Bank Building, Mobile, Alabama.

Certificate of Service (omitted in printing).

[fol. 171]

EXHIBIT "A" TO MOTION

Number	*County*
1	Autauga
2	Baldwin
3	Barbour
4	Bibb
5	Blount
6	Bullock
7	Butler
8	Calhoun
9	Calhoun
10	Calhoun
11	Chambers
12	Cherokee
13	Chilton
14	Choctaw
15	Clarke
16	Clay
17	Cleburne
18	Coffee
19	Colbert
20	Conecuh
21	Coosa
22	Covington
23	Crenshaw
24	Cullman
25	Dale
26	Dallas
27	Dallas
28	DeKalb
29	Elmore
30	Escambia
31	Etowah
32	Etowah
33	Etowah
34	Fayette
35	Franklin
36	Geneva
37	Greene

Number	*County*
38	Hale
39	Henry
40	Houston
41	Jackson
42	Jefferson
43	Jefferson
44	Jefferson
45	Jefferson
46	Jefferson
47	Jefferson
48	Jefferson
49	Jefferson
50	Jefferson
[fol. 172]	
51	Jefferson
52	Jefferson
53	Jefferson
54	Jefferson
55	Jefferson
56	Jefferson
57	Jefferson
58	Jefferson
59	Lamar
60	Lauderdale
61	Lauderdale
62	Lawrence
63	Lee
64	Limestone
65	Lowndes
66	Macon
67	Madison
68	Madison
69	Madison
70	Marengo
71	Marion
72	Marshall
73	Mobile
74	Mobile
75	Mobile

Number	*County*
76	Mobile
77	Mobile
78	Mobile
79	Mobile
80	Mobile
81	Monroe
82	Montgomery
83	Montgomery
84	Montgomery
85	Montgomery
86	Morgan
87	Morgan
88	Perry
89	Pickens
90	Pike
91	Randolph
92	Russell
93	Shelby
94	St. Clair
95	Sumter
96	Talladega
97	Talladega
98	Tallapoosa
99	Tuscaloosa
100	Tuscaloosa
[fol. 173]	
101	Tuscaloosa
102	Walker
103	Walker
104	Washington
105	Wilcox
106	Winston

[fol: 174]

EXHIBIT "B" TO MOTION

Number	*District*
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	9
10	10
11	11
12	12
13	13
14	13
15	13
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19	13
20	14
21	15
22	16
23	17
24	18
25	19
26	20
27	21
28	22
29	23
30	24
31	25
32	26
33	27
34	28
35	28
36	29

Number	*District*
37	30
38	31
39	32
40	33
41	33
42	33
43	34
44	35

[fol. 175] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

[Title omitted]

MOTION FOR A PRELIMINARY INJUNCTION
—Filed July 13, 1962

Upon the verified bill of complaint filed herein, and the affidavits of Charles Morgan, Jr. and George Peach Taylor, the Plaintiffs move the Court to issue a preliminary injunction enjoining and restraining the Defendants, MacDonald Gallion and Bettye Frink, Attorney General and Secretary of State of the State of Alabama, respectively, and the Defendants, J. Paul Meeks, John A. Sankey and Harrell Hammonds, Judges of Probate of Jefferson, Montgomery and Lowndes Counties, respectively, and all other judges of probate of the State of Alabama, and their successors in office, and their agents, officers, assistants and employees [fol. 176] from: doing and performing any and all acts, things, and duties, including, but not limited to, the preparation and distribution of ballots, receipt of returns and certificates of the total number of electors having voted, being amongst those present at the time of ascertainment of whether or not a majority of the qualified electors of the State voted "yes", and doing any other act or thing or performing any other duty in connection with elections which would enable the conduct of an election on a constitutional

amendment adopted by the Legislature of Alabama on the 12th day of July, 1962, being Act No. ....., and commonly termed the "67 Senator Amendment", a copy of which such Act is attached hereto, marked Exhibit "A", and thereby made a part of this motion, and further enjoining and restraining the above named defendants from doing or performing any of the above enumerated acts, things or duties with respect to any other constitutional amendment which would, in any manner, change, alter, amend or delete those provisions of the Constitution of Alabama of 1901 which establish population as the proper basis for districting and apportioning the Legislature of Alabama at least until such time as said Legislature has reapportioned itself in accordance with the presently applicable provisions of the said Constitution.

The grounds of this motion, as more fully set forth in the complaint as amended, and the annexed affidavits of Charles Morgan, Jr. and George Peach Taylor are that:

(a) The Legislature (House of Representatives and Senate) of the State of Alabama is severely mal-apportioned and as a result of such mal-apportionment the conducting of the 1962 general election on the same basis as in the past will result in a continuation of a system or scheme of representation in such Legislature which deprives the Plaintiffs of the equal protection of the law.

[fol. 177] (b) The Defendants, unless enjoined, threaten to conduct and will conduct an election as provided for in said amendment to the Constitution of Alabama.

(c) The conducting of an election on the said constitutional amendment to the Constitution of Alabama of 1901 will cause immediate and irreparable injury to Plaintiffs and all others similarly situated.

(d) Unless the Defendants are restrained pending final disposition of this action, the injury to Plaintiffs will be irreparable even with final judgment for Plaintiffs.

(e) No injury will be sustained by Defendants or by the public through the issuance of a preliminary injunction.

(f) The issuance of a preliminary injunction as prayed for herein will not cause undue inconvenience or loss to

Defendants, but will prevent irreparable injury to Plaintiffs.

(g) Plaintiffs respectfully suggest that under the provisions of Subdivision (4) of Section 2284, Title 28, United States Code, that a hearing on this petition for preliminary injunction be set for 10:00 A. M. on the 16th day of July, 196?

Charles Morgan, Jr., 1512 Comer Building, Birmingham 3, Alabama;

George Peach Taylor, 927 Brown-Marx Building, Birmingham 3, Alabama, Attorneys for Plaintiffs.

[fol. 178] Certificate of Service (omitted in printing).

[fol. 179]

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

NORTHERN DIVISION

AFFIDAVIT OF CHARLES MORGAN, JR. TO SUPPORT MOTION

Charles Morgan, Jr. being duly sworn on oath, deposes and says as follows:

1. That he is a plaintiff in the above entitled action.

2. That this is an action to protect the voting rights of the plaintiffs and all others who are similarly situated and to protect their rights to equal protection of the law by obtaining a declaration of the rights of the plaintiffs pursuant to 58 Stat. L. 890, 28 U.S.C. 2201, in the premises, to-wit:

A. That the present legislative apportionment of the State of Alabama has deprived and continues to deprive the plaintiffs of liberty and property without due process of law and has denied and continues to deny the plaintiffs equal protection of the law in violation of the Fourteenth Amendment to the Constitution of the United States of America.

B. That the apportionment of the Legislature of the State of Alabama as established under and by virtue of Sections 1 and 2 of Title 32 of the Alabama Code of 1940, as amended, and Sections 202 and 203 of Article 9 of the Constitution of Alabama of 1901 is void and invalid as being contrary to the Fourteenth Amendment to the Constitution of the United States of America and the Consti- [fol. 180] tution of Alabama of 1901 because of the failure of the Legislature of Alabama to redistrict the counties forming senatorial districts and to reapportion the number of senators thereby in accordance with the present population of Alabama as set forth in the Federal decennial census of 1960, and because of the failure of the Legislature of Alabama to reapportion the House of Representatives of the Legislature of Alabama in accordance with present population of Alabama as set forth in the Federal decennial census of 1960.

C. That the right of the plaintiffs to vote as guaranteed by the laws and Constitution of Alabama of 1901 and the laws and Constitution of the United States has been impaired by the failure of the Legislature of Alabama to redistrict the counties forming senatorial districts and to reapportion the number of senators thereby in accordance with the present population of Alabama as set forth in the Federal decennial census of 1960, and because of the failure of the Legislature of Alabama to reapportion the House of Representatives of the Legislature of Alabama in accordance with the present population of Alabama as set forth in the Federal decennial census of 1960.

D. That the Legislature of Alabama may not propose an amendment to the Constitution of Alabama of 1901 which would effect a change, alteration or amendment of those provisions of the Constitution of Alabama of 1901 which establish population as the proper basis for redistricting and reapportioning the Legislature until such time as the Legislature has redistricted and reapportioned itself in accordance therewith, if at all.

3. That on the 14th day of April, 1962, this Honorable Court entered an order which stated in part as follows:

"The controlling constitutional formula which runs throughout the Constitution of Alabama is thus ex-
[fol. 181] pressed in the last sentence of Section 284 of said Constitution: 'Representation in the legislature shall be based upon population, and such basis of representation shall not be changed by constitutional amendments.' See also Sections 198 to 201, inclusive. If that formula is met, then there can be no valid objection under the equal protection clause or any other part of the Constitution of the United States, which is, of course, the supreme law of the Land, binding alike on this Court and on the Legislature of Alabama (Article VI, Clauses 2 and 3 of the Constitution of the United States). It is necessary that any action taken by the Legislature comply with constitutional standards, and it is important that such standards be met not half-heartedly but fully, because once there has been a legislative reapportionment, unless it so completely fails to meet constitutional standards that it must be set aside by court order, it will not be subject to alteration until the next session of the Legislature after the decennial census in 1970 (Constitution of Alabama, Section 198)."

4. That on the 12th day of July, 1962, the Legislature of Alabama did enact Act No. ..... under and by virtue of Section 284 of Article XVIII of the Alabama Constitution of 1901 (as amended, by Amendment XXIV), the said Act proposing an amendment to such Constitution, a copy of which such Act is attached to Plaintiffs' Motion for A Preliminary Injunction.

5. That Act No. ....., hereafter sometimes referred to as the "67 Senator Amendment", apportions representation in the House of Representatives on a political unit modified by population basis the "equal proportions" method of allocating seats of such House of Representatives having been complied with therein. Under the terms and provisions of said Act No. ..... the basis of representation in the said House of Representatives is based on political units in that 67 members of said House of Repre-

sentatives are to be apportioned on the basis of one representative per county rather than population, the remaining [fol. 182] 39 members of said House of Representatives to be apportioned on a population basis as provided in Section 199 of the Alabama Constitution of 1901.

6. That the "67 Senator Amendment" provides for the establishment of a strict geographical or political unit distribution of senatorial districts, one such district to be coextensive with each of the 67 counties of the State of Alabama and such constitutional amendment does not comply with the terms and provisions of the last sentence of said Section 284 of said Constitution in that such sentence provides:

> "Members in the Legislature shall be based upon population, and such basis of such representation shall not be changed by constitutional amendment."

7. That under the terms and provisions of the "67 Senator Amendment", the House of Representatives of the Legislature of Alabama would be apportioned primarily on an arbitrary basis and the Senate of the Legislature of the State of Alabama would be apportioned and distributed on an arbitrary basis, and the adoption of such amendment to the Alabama Constitution of 1901 will result in a continued deprivation to the Plaintiffs of liberty and property without due process of law and will continue to deny to the plaintiffs equal protection of the laws in violation of the Fourteenth Amendment of the Constitution of the United States of America, as well as the Alabama Constitution of 1901.

8. That the proposed "67 Senator Amendment" is void in that its adoption would result in a deprivation to Plaintiffs of rights protected by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States of America in that the standards to be applied under said clauses should be no lower than standards expressly provided in the Constitution of Alabama which can be enforced only by this Court.

[fol. 183] 9. The Defendants, unless enjoined, threaten to conduct and will conduct an election as provided for in said amendment to the Constitution of Alabama.

10. The conducting of an election on the said constitutional amendment to the Constitution of Alabama of 1901 will cause immediate and irreparable injury to Plaintiffs and all others similarly situated.

11. Unless the Defendants are restrained pending final disposition of this action, the injury to Plaintiffs will be irreparable even with final judgment for Plaintiffs.

12. No injury will be sustained by Defendants or by the public through the issuance of a preliminary injunction.

13. The issuance of a preliminary injunction as prayed for herein will not cause undue inconvenience or loss to Defendants, but will prevent irreparable injury to Plaintiffs.

Charles Morgan, Jr.

Sworn to and suscribed before me
this 12th day of July, 1962.

Eleanor F. Carlee, Notary Public.

[Seal]

[fol. 184]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

AFFIDAVIT OF GEORGE PEACH TAYLOR TO SUPPORT MOTION

George Peach Taylor being duly sworn on oath, deposes and says as follows:

1. That he is a plaintiff in the above entitled action.

2. That this is an action to protect the voting rights of the plaintiffs and all others who are similarly situated and

to protect their rights to equal protection of the law by obtaining a declaration of the rights of the plaintiffs pursuant to 58 Stat. L. 890, 28 U.S.C. 2201, in the premises, to-wit:

A. That the present legislative apportionment of the State of Alabama has deprived and continues to deprive the plaintiffs of liberty and property without due process of law and has denied and continues to deny the plaintiffs equal protection of the law in violation of the Fourteenth Amendment to the Constitution of the United States of America.

B. That the apportionment of the Legislature of the State of Alabama as established under and by virtue of Sections 1 and 2 of Title 32 of the Alabama Code of 1940, as amended, and Sections 202 and 203 of Article 9 of the Constitution of Alabama of 1901 is void and invalid as being contrary to the Fourteenth Amendment to the Constitution of the United States of America and the Constitu-
[fol. 185] tion of Alabama of 1901 because of the failure of the Legislature of Alabama to redistrict the counties forming senatorial districts and to reapportion the number of senators thereby in accordance with the present population of Alabama as set forth in the Federal decennial census of 1960, and because of the failure of the Legislature of Alabama to reapportion the House of Representatives of the Legislature of Alabama in accordance with present population of Alabama as set forth in the Federal decennial census of 1960.

C. That the right of the plaintiffs to vote as guaranteed by the laws and Constitution of Alabama of 1901 and the laws and Constitution of the United States has been impaired by the failure of the Legislature of Alabama to redistrict the counties forming senatorial districts and to reapportion the number of senators thereby in accordance with the present population of Alabama as set forth in the Federal decennial census of 1960, and because of the failure of the Legislature of Alabama to reapportion the House of Representatives of the Legislature of Alabama in accordance with the present population of Alabama as set forth in the Federal decennial census of 1960.

D. That the Legislature of Alabama may not propose an amendment to the Constitution of Alabama of 1901 which would effect a change, alteration or amendment of those provisions of the Constitution of Alabama of 1901 which establish population as the proper basis for redistricting and reapportioning the Legislature until such time as the Legislature has redistricted and reapportioned itself in accordance therewith, if at all.

3. That on the 14th day of April, 1962, this Honorable Court entered an order which stated in part as follows:

> "The controlling constitutional formula which runs throughout the Constitution of Alabama is thus ex- [fol. 186] pressed in the last sentence of Section 284 of said Constitution: 'Representation in the legislature shall be based upon population, and such basis of representation shall not be changed by constitutional amendments.' See also Sections 198 to 201, inclusive. If that formula is met, then there can be no valid objection under the equal protection clause or any other part of the Constitution of the United States, which is, of course, the supreme law of the Land, binding alike on this Court and on the Legislature of Alabama (Article VI, Clauses 2 and 3 of the Constitution of the United States). It is necessary that any action taken by the Legislature comply with constitutional standards, and it is important that such standards be met not half-heartedly but fully, because once there has been a legislative reapportionment, unless it so completely fails to meet constitutional standards that it must be set aside by court order, it will not be subject to alteration until the next session of the Legislature after the decennial census in 1970 (Constitution of Alabama, Section 198)."

4. That on the 12th day of July, 1962, the Legislature of Alabama did enact Act No. ..... under and by virtue of Section 284 of Article XVIII of the Alabama Constitution of 1901 (as amended, by Amendment XXIV), the said Act proposing an amendment to such Constitution, a copy of which such Act is attached to Plaintiffs' Motion for A Preliminary Injunction.

5. That Act No. ....., hereafter sometimes referred to as the "67 Senator Amendment", apportions representation in the House of Representatives on a political unit modified by population basis the "equal proportions" method of allocating seats of such House of Representatives having been complied with therein. Under the terms and provisions of said Act No. ..... the basis of representation in the said House of Representatives is based on political units in that 67 members of said House of Representatives are to be apportioned on the basis of one representative per county rather than population, the remaining 39 [fol. 187] members of said House of Representatives to be apportioned on a population basis as provided in Section 199 of the Alabama Constitution of 1901.

6. That the "67 Senator Amendment" provides for the establishment of a strict geographical or political unit distribution of senatorial districts, one such district to be coextensive with each of the 67 counties of the State of Alabama and such constitutional amendment does not comply with the terms and provisions of the last sentence of said Section 284 of said Constitution in that such sentence provides:

> "Members in the Legislature shall be based upon population, and such basis of such representation shall not be changed by constitutional amendment."

7. That under the terms and provisions of the "67 Senator Amendment", the House of Representatives of the Legislature of Alabama would be apportioned primarily on an arbitrary basis and the Senate of the Legislature of the State of Alabama would be apportioned and distributed on an arbitrary basis, and the adoption of such amendment to the Alabama Constitution of 1901 will result in a continued deprivation to the Plaintiffs of liberty and property without due process of law and will continue to deny to the plaintiffs equal protection of the laws in violation of the Fourteenth Amendment of the Constitution of the United States of America, as well as the Alabama Constitution of 1901.

8. That the proposed "67 Senator Amendment" is void in that its adoption would result in a deprivation to Plaintiffs of rights protected by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States of America in that the standards to be applied under said clauses should be no lower than standards expressly provided in the Constitution of Alabama which can be enforced only by this Court.

[fol. 188] 9. The Defendants, unless enjoined, threaten to conduct and will conduct an election as provided for in said amendment to the Constitution of Alabama.

10. The conducting of an election on the said constitutional amendment to the Constitution of Alabama of 1901 will cause immediate and irreparable injury to Plaintiffs and all others similarly situated.

11. Unless the Defendants are restrained pending final disposition of this action, the injury to Plaintiffs will be irreparable even with final judgment for Plaintiffs.

12. No injury will be sustained by Defendants or by the public through the issuance of a preliminary injunction.

13. The issuance of a preliminary injunction as prayed for herein will not cause undue inconvenience or loss to Defendants, but will prevent irreparable injury to Plaintiffs.

George Peach Taylor

Sworn to and subscribed before me
this 12th day of July, 1962.

Eleanor F. Carlee, Notary Public.

[Seal]

[fol. 189]

EXHIBIT "A" TO MOTION

ACT No. .....

Proposing an amendment to the Constitution of Alabama relating to legislative apportionment.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. The following amendment to the Constitution of Alabama 1901 is proposed and shall become valid as a part thereof when approved and proclaimed as prescribed by law:

Proposed Amendment

1. The legislature of Alabama shall consist of a senator for each county and 106 members of the house of representatives, to be apportioned among the the several counties as herein prescribed; provided, that in addition to the above number of representatives each new county hereafter created shall be entitled to at least one representative.

2. At the general election in 1966, and every four years thereafter, a senator shall be elected by the qualified electors of each county in the state.

3. At the general election in 1966, and every four years thereafter, until the house of representatives is reapportioned as herein provided, the qualified electors of each county in the state shall elect such number of representatives as may be apportioned to the county as follows:

The county of Jefferson shall have and elect seventeen representatives; the county of Mobile shall have and elect eight representatives; the county of Montgomery shall have and elect four representatives; the counties of Calhoun, Etowah, Madison and Tuscaloosa shall each have and elect three representatives; the counties of Dallas, Lauderdale, Morgan, Talladega and Walker shall each have and elect two representatives; and the remaining counties of the state shall each have and elect one representative.

4. On the first day, or within one week thereafter, of the regular session of the legislature in 1971, and every fifth regular session thereafter, the clerk of the house of representatives shall transmit to the secretary of state a statement showing the whole number of persons in each county under the most recent decennial census of the United States, and the number of representatives to which each county will be entitled under an apportionment of the then existing number of representatives by the method known as the method of equal proportions, no county to receive less than one representative.

5. In Section 284 of this Constitution as amended, strike out the last sentence thereof and insert the following sentence:

Representation in the house of representatives of the legislature shall be based upon population.

[fol. 190] 6. Article IX (Sections 197-203) of the Constitution is hereby expressly repealed.

Section 2. An election upon the proposed amendment is ordered to be held on the date of the general election next succeeding the final adjournment of the current session of the Legislature. The election shall be held in accordance with the provisions of Sections 284 and 285 of the Constitution of Alabama, as amended, and Chapter 1, Article 18, Title 17 of the Code of Alabama 1940.

Section 3. Notice of the election and of the proposed amendment shall be given by proclamation of the Governor, which proclamation shall be published once a week for four successive weeks next preceding the day appointed for the election in a newspaper in each county of the State. In every county in which no newspaper is published, a copy of the notice shall be posted at each courthouse and post office.

[fol. 191] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

[Title omitted]

AMENDED ANSWER OF SECRETARY OF STATE
—Filed July 13, 1962

Now comes defendant Bettye Frink as Secretary of State of the State of Alabama and amends her answer heretofore filed by adding the following paragraphs.

A. Since the filing of this suit and before July 16, 1962, the Legislature of Alabama has passed two acts relating to reapportionment of its membership. Copies of these acts are attached to the answer of MacDonald Gallion as Attorney General of Alabama and are herein adopted and made a part hereof by reference.

B. The said acts have now rendered the plaintiffs' and intervenors' complaints as ones which do not present a claim upon which relief may be granted.

C. The said acts have caused this case to present matters which have become moot and the suit is subject to dismissal by the Court.

D. The said acts comply with all constitutional standards subject to Federal jurisdiction, but if this defendant is mistaken she respectfully requests the Court for further guidance as to what specific action the Legislature must take in order to comply with the Court's order of April 14, 1962. In this connection defendant avers that the present Legislature is in recess and another will be elected in November 1962.

[fol. 192] E. Defendant avers that compliance with constitutional standards, it not now met, may be met by the Legislature if it knows specifically what the Court requires.

MacDonald Gallion, Attorney General of Alabama; Leslie Hall, Assistant Attorney General of Alabama; Gordon Madison, Assistant Attorney General of Alabama, Attorneys for said Defendant.

Certificate of Service (omitted in printing).

[fol. 193] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

[Title omitted]

AMENDED ANSWER OF ATTORNEY GENERAL
—Filed July 13, 1962

Now comes the defendant, MacDonald Gallion, as Attorney General of Alabama and amends his answer filed in this cause by setting forth and alleging the following in the alternative.

First Defense

The Legislature has passed two acts, copies of which are attached hereto and made a part hereof as Exhibits "A" and "B".

Defendant avers that these acts, one or both, meet the constitutional standards referred to by the Court in its order of April 14, 1962.

Second Defense

The last sentence of Section 284, Constitution of Alabama 1901, provides that representation in the Legislature shall be based upon population, and such basis of representation shall not be changed by constitutional amendment.

The Legislature under Section 44, Constitution of Alabama 1901, consists of a senate and house of representatives; therefore, representation in both the Senate and House must be based upon population.

Despite these provisions placed in the organic law by the Constitutional Convention of 1901, it immediately by other provisions apportioned the Legislature, both houses, on a basis which is not upon population. The population [fol. 194] of counties in 1900 is shown by Exhibit "C" hereto attached and made a part hereof.

The said Constitutional Convention likewise placed in the organic law other provisions appearing as Sections 197, 198, 199, 200, and 201 of the 1901 Alabama Constitution.

Defendant avers that these sections render it impossible to apportion both houses, or either house on a population basis.

Section 199 provides that each county is entitled to one representative. In 1900 the population of Winston County was 9,554 and Greene 24,182, yet each had only one representative. Defendant avers that this was not then and is not now an apportionment according to the number of inhabitants.

Madison County with 43,702 inhabitants had two representatives, but Butler County with 25,761 inhabitants also had two. Defendant avers that this is not an apportionment based upon population.

Defendant avers that in the Senate, Lowndes County in 1900 had a senator of its own with 35,315 inhabitants, while Jefferson County with 140,420 inhabitants had the same representation as Lowndes. In similar fashion Wilcox County with 35,631 inhabitants had one senator, while Montgomery County with 72,047 inhabitants had only one also. This is not apportionment in the Senate upon a population basis.

Defendant further avers that by Article IX, Constitution of Alabama 1901, and subsequent statutes, the House consists of 106 members and the Senate 35; that the whole number of senators shall be not less then one-fourth or more than one-third of the whole number of representatives; that the State is to be divided into as many senatorial districts as there are senators, which districts shall be as nearly equal to each other in the number of inhabitants as may be; each district to have one senator and no more; no county shall be divided between two districts, and no

district shall be made up of two or more counties not contiguous to each other.

Jefferson County has always been considered as a separate senatorial district. According to the last Federal Census, it has a population of 634,864. The state population is 3,266,740, roughly five times the population of Jefferson. To fix districts on the basis of population con- [fol. 195] sidering Jefferson County as a separate district there could be only five in all and five senators in all. Since the number of senators shall be not less than one-fourth or more than one-third of the whole number of representatives, twenty house members would be required for a five member senate. This cannot be, however, because each county is entitled to one representative, sixty-seven in all.

Defendant avers that it is contended by some that Jefferson County could be divided into senatorial districts under the population formula, but others point to the constitutional prohibition that "no county shall be divided between two districts."

Defendant further avers that inconsistency, conflicts, and impossible compliance requirements are contained in the organic law of Alabama which has heretofore rendered it impossible to meet the equal protection or due process provision of the Fourteenth Amendment to the Constitution of the United States, so long as said provisions remain in the organic law unchallenged on constitutional grounds.

Wherefore, defendant avers and contends that when so considered the last sentence of Section 284, Constitution of Alabama 1901, is unconstitutional and void as being in violation of the Fourteenth Amendment to the Constitution of the United States; that the formulas provided by Sections 199 and 200 conflict with said last sentence in Section 284 and cannot be applied so as to apportion the Legislature on a population basis. These conditions have been the real ones bringing about the alleged violation of the Fourteenth Amendment by the inactivity of the Legislature in apportioning and should be by this court corrected or avoided in deciding the validity of the present acts, Exhibits "A" and "B" as being in compliance with the Federal Constitution.

Third Defense

Defendant avers that the sole question presented here is whether or not the acts of the Legislature, one or both, comply with the Fourteenth Amendment to the Constitution of the United States; that the acts were passed in good faith after careful and deliberate consideration by both the Senate and House, and in the context of this case present a rational plan involving no invidious discrimination.

If mistaken, however, defendant respectfully requests the Court to point out wherein the acts of the Legislature are [fol. 196] not rational and to lay down specific requirements to meet the constitutional test and then give the Legislature to be elected in November 1962 an opportunity to meet those requirements by a specific date.

This defendant believes that a healthy respect for the division of powers between the central government and the states is conducive to harmonious and effective government on all levels.

In *MaGraw* v. *Donovan*, 163 F.Supp. 184, in a similar case, the Court followed this procedure and said:

> "We must have a 'scrupulous regard for the rightful independence of the state governments,' and should refrain from acting where proper recourse may be had to a branch or tribunal of the state government."

See also *Dyer* v. *Kazuhisa Abe*, 138 F.Supp. 220, 256 F.2d 728; *Asbury Park Press* v. *Woolley*, 161 A.2d 705; *MaGraw* v. *Donovan*, 159 F.Supp. 901, 177 F.Supp. 803; *Baker* v. *Carr*, Civil Action 2724, after remandment, decided June 24, 1962; *Toombs* v. *Fortson, Ga.*, Civil Action No. 7883, decided May 25, 1962.

MacDonald Gallion, Attorney General of Alabama; Leslie Hall, Assistant Attorney General of Alabama; Gordon Madison, Assistant Attorney General of Alabama, Attorneys for said Defendant.

Certificate of Service (omitted in printing).

[fol. 197]

EXHIBIT "A" TO AMENDED ANSWER

THE STATE OF ALABAMA

DEPARTMENT OF STATE

I, BETTYE FRINK, Secretary of State of the State of Alabama, do hereby certify that the pages hereto attached, contain a true, accurate and literal copy of Act No. 91, House Bill 59, passed in the 1962 Special Session of the Legislature and approved by the Governor on July 12, 1962, as the same appears on file and of record in this office.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State, at the Capitol, in the City of Montgomery, this 12th day of July One Thousand Nine Hundred and Sixty-two.

[SEAL]

Secretary of State.

[fol. 198]

Act #91—

Approved July 12, 1962

Bevill, Shumate, Gilchrist, Hanby, Oden

N. 59

Enrolled, An Act, To fix the number of senators and representatives in the legislature, divide the state into senatorial districts, and apportion the senators and representatives among the several districts and counties.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. The senate of the legislature shall be composed of 35 senators representing 35 senatorial districts, each district to elect one senator and no more.

Section 2. The state is hereby divided into 35 senatorial districts as follows:

First, the counties of Lauderdale and Limestone; second, the counties of Lawrence and Morgan; third, the counties

of Cullman and Winston; fourth, the county of Madison; fifth, the counties of Jackson and Marshall; sixth, the county of Etowah; seventh, the county of Calhoun; eighth, the county of Talladega; ninth, the counties of Randolph and Chambers; tenth, the counties of Elmore and Tallapoosa; eleventh, the county of Tuscaloosa; twelfth, the counties of Fayette and Walker; thirteenth, the county of Jefferson; fourteenth, the counties of Pickens and Lamar; fifteenth, the counties of Autauga, Chilton and Shelby; sixteenth, the counties of Monroe and Wilcox; seventeenth, the counties of Butler, Covington and Conecuh; eighteenth, the counties of Bibb and Perry; nineteenth, the counties of Clarke, Choctaw and Washington; twentieth, the counties of Marengo and Sumter; twenty-first, the counties of Baldwin and Escambia; twenty-second, the counties of Blount and St. Clair; twenty-third, the counties of Dale and Geneva; twenty-fourth, the counties of Barbour and Pike; twenty-fifth, the counties of Coffee and Crenshaw; twenty-sixth, the counties of Bullock and Macon; twenty-seventh, the counties of Lee and Russell; twenty-eighth, the county of Montgomery; twenty-ninth, the counties of Cherokee and DeKalb; thirtieth, the counties of Dallas and Lowndes; thirty-first, the counties of Colbert, Franklin and Marion; thirty-second, the counties of Greene and Hale; thirty-third, the county of Mobile; thirty-fourth, the counties of Coosa, Clay and Cleburne; thirty-fifth, the counties of Henry and Houston.

In districts consisting of more than one county, the senators shall not be elected for more than one term consecutively from any one county in the district, but shall reside in and be elected alternately and in turn from each of the counties within such district. The first senator to be elected in such districts shall reside in the county having the largest population, except where that county had the last preceding senator. It is provided, however, that any senator in office on the effective date of this enactment shall be eligible to succeed himself as a member of the Senate, any other provision of this paragraph to the contrary notwithstanding.

Section 3. The house of representatives of the legislature shall consist of 106 members distributed among the several counties of the state as follows:

The county of Jefferson shall have and elect 12, the county of Mobile 6, and the county of Montgomery 4; the counties of Calhoun, Etowah, Madison and Tuscaloosa 3 each; the counties of Baldwin, Colbert, Cullman, Dallas, Houston, Lauderdale, Lee, Marshall, Morgan, Russell, Talladega and Walker 2 each; and the remaining counties 1 each.

Section 4. This Act shall take effect for the election of senators and representatives at the general election to be [fol. 199] held in November 1966, and shall be effective thereafter until the legislature is reapportioned according to law.

Section 5. The provisions of this Act are severable. If any part of this Act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

/s/ Virgis M. Ashworth
Speaker of the House of Representatives

/s/ Albert Boutwell
President and Presiding Officer of the Senate

House of Representatives
July 10, 1962

I hereby certify that the within Act originated in and was passed by the House June 26, 1962 as amended.

/s/ Oakley Melton, Jr.
Clerk

Senate	7/ 7/62	Amended and Passed
House	7/10/62	Concurred in Senate Amendment

[fol. 200]

EXHIBIT "B" TO AMENDED ANSWER

CLERK'S NOTE

Exhibit "B" to amended answer—Senate Bill No. 29 has been omitted from the record here. Please see side folio 376, page 157.

[fol. 202]

EXHIBIT "C" TO AMENDED ANSWER

POPULATION OF ALABAMA COUNTIES—1900

County	Population	House
Autauga	17,915	1
Baldwin	13,194	1
Barbour	35,152	2
Bibb	18,498	1
Blount	23,119	1
Bullock	31,944	2
Butler	25,761	2
Cullman	17,849	1
Chambers	32,554	2
Cherokee	21,096	1
Chilton	16,522	1
Choctaw	18,136	1
Clarke	27,790	2
Clay	17,099	1
Cleburne	13,206	1
Coffee	20,972	1
Colbert	22,341	1
Conecuh	17,514	1
Coosa	16,144	1
Covington	15,364	1
Crenshaw	19,668	1
Calhoun	34,874	2
Dale	21,189	1
Dallas	54,857	3
DeKalb	23,558	1
Elmore	26,099	2
Escambia	11,320	1

County	Population	House
Etowah	27,361	2
Fayette	14,132	1
Franklin	16,511	1
Geneva	19,096	1
Greene	24,182	1
Hale	31,011	2
Henry	36,147	2
Jackson	30,508	2
Jefferson	140,420	7
Lamar	16,084	1
Lauderdale	26,559	2
Lawrence	20,124	1
Lee	31,826	2
Limestone	22,387	1
Lowndes	35,651	2
Macon	23,126	1
Madison	43,702	2
Marengo	38,315	2
Marion	14,497	1
Marshall	23,289	1
Mobile	62,740	3
Monroe	23,666	1
Montgomery	72,047	4
Morgan	28,820	2
Perry	31,783	2
Pickens	24,402	1
Pike	29,172	2
Randolph	21,647	1
Russell	27,083	2
St. Clair	19,425	1
Shelby	23,684	1
Sumter	32,710	2
Talladega	35,773	2
Tallapoosa	29,675	2
Tuscaloosa	36,147	2
Walker	25,162	2
Washington	11,134	1
Wilcox	35,631	2
Winston	9,554	1

[fol. 203]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
(NORTHERN DIVISION)

[Title omitted]

AFFIDAVIT OF DAVID J. VANN—Filed July 14, 1962

State of Alabama)
Jefferson County)

Before me, Clariece D. Sheram, a Notary Public in and for said State and County, personally appeared David J. Vann, who is known to me, and who, having been duly sworn, deposed and said:

That he personally made the computations shown in Tables I through XII. Such computations are based on the 1960 United States census. Computations with respect to the House of Representatives apply the standard statistical methods set out in "A Survey of Methods of Reapportionment in Congress," by Edward V. Huntington, Department of Mathematics, Harvard University, Senate Document No. 304, 76th Congress, Third Session (1940). Computations with respect to the Senate were made on a trial basis until what appears to be the most nearly perfect combination of political units was discovered. All computations have been checked by him for accuracy and to the best of his knowledge and belief they are true and correct.

That as Chairman of the Jefferson County Democratic Campaign Committee he has formally requested the Governor to seek an advisory opinion from the Supreme Court of Alabama, he petitioned the Legislature to amend the reapportionment bills enacted, pointing out their specific objections thereto, and he petitioned the Governor to use his power of executive amendment under Section 125 of the Constitution of 1901 to recommend changes in such bill as required by the Constitution of Alabama.

David J. Vann.

Sworn to and subscribed before
me this 13th day of July, 1962.

Clariece D. Sheram, Notary Public, Jefferson County, Alabama—My Commission Expires: 6/22/68.

[File endorsement omitted]

[fol. 204]

APPENDIX A TO AFFIDAVIT

Standard Methods of Reapportionment for the House of Representatives

A comprehensive discussion of reapportionment methods is set out in Senate Document No. 304, 76th Congress, Third Session, "A Survey of Methods of Reapportionment in Congress," by Edward V. Huntington, Department of Mathematics, Harvard University (1940). The discussion which follows is a brief resume of that study, applied to Alabama.

There are five methods of computing apportionment of legislative bodies having a fixed size limitation. These five methods, which are the only workable methods which can be applied consistently without the production of mathematical paradoxes are as follows:

1. Equal Proportions
2. Harmonic Means
3. Major Fractions
4. Smallest Divisors
5. Greatest Divisors

When applied to a legislature the size of Alabama's, each is merely a method of distributing the few extra members on a population basis. Most of the members, 67 of the 106, are distributed on a basis of pure geography, one to each county. Each of these methods is explained mathematically here. And in Tables I, II, III, IV and V to this brief each method is explained statistically.

I. Equal Proportions

The method of Equal Proportions endeavors to equalize the representation between counties in the legislative body of a fixed size by reducing as much as possible the per- [fol. 205] centage difference between the representation of each county. The statistical method for making assignments of all seats is shown in Table I to this brief. Individual county seats are explained below.

Under this method, under any proposed reapportionment, the propriety of the transfer of a seat from one county to another can be tested if you know the population of the counties or districts involved by the application of either of two seats.

> Test #1. *Percentage difference between districts.* A proposed transfer of a seat from one county to another should be made, if, and only if, the percentage difference between the number of persons represented by an individual representative from the county would be reduced by the transfer.

This test can be demonstrated by the following example taken from a current Alabama problem. Under one proposal Montgomery County, with a population of 169,302, would be assigned four (4) representatives; and, Walker County, with a population of 54,211, would be assigned two representatives. Under another proposal representation for Montgomery County would be increased to five (5) and that of Walker County would be reduced to one (1).

First you compute the number of persons each representative would represent, and compare the percentage difference under each proposal as shown in Table A.

[fol. 206]

TABLE A

County	Population	Proposal 1 R.	Proposal 1 No. Represented	Proposal 2 R.	Proposal 2 No. Represented
Montgomery	169,302	4	42,302	5	33,842
Walker	54,211	2	27,105	1	54,211
Percentage Disparity			55%		60%

Under Table A, since the ratio of 27,105 to 42,302 is 1.55, while the ratio of 33,842 to 54,211 is 1.60, it is apparent that the percentage disparity increases from 55% to 60%, rather than decreases, and that the transfer should not be made.

Test #2. *Percentage difference between individual shares.* An alternative test under the method of Equal Proportions would make a proposed transfer of a representative's seat from one county to another if, and only if, the percentage difference between the individual shares of citizens in the two counties would be reduced by the transfer. "An individual share" is computed by dividing the population of the county into the number of representatives proposed. This computation, using the same example, is illustrated by Table B.

TABLE B

County	Population	Proposal 1 R.	Proposal 1 Individual Share	Proposal 2 R.	Proposal 2 Individual Share
Montgomery	169,302	4	.000024	5	.000029
Walker	54,211	2	.000037	1	.000018
Percentage Disparity			54%		61%

[fol. 207] Since the ratio of 24 to 37 is 1.54 and that of 18 to 29 is 1.61, it is clear that under the second test the transfer should not be made.

II. Major Fractions Method

This method is based upon a comparison of the absolute difference between the individual shares of representation

of the persons represented in the Legislature. The method is based upon the absolute difference in these individual shares and not upon the relative difference. The overall results are shown in Table II to this brief.

Under this method the test of a proposed transfer of a seat from one county to another is:

> Test: A proposed transfer of a seat in the Legislature from one county to another would be made if, and only if, the absolute difference between the individual shares in the two counties would be reduced by the transfer.

This method can also be used to test the example with respect to Montgomery and Walker counties. The decrease in the equality between individual shares results in the acceptance, under this method, of the Proposal 2.

TABLE C

County	Population	Proposal 1 R.	Proposal 1 Individual Share	Proposal 2 R.	Proposal 2 Individual Share
Montgomery	169,302	4	.000024	5	.000029
Walker	54,211	2	.000037	1	.000018
Absolute Inequality			.000013		.000011

[fol. 208] Summary: The method of Major Fractions is a method which equalizes, as far as possible, the individual shares representation of the persons in various counties on the basis of absolute differences. The method makes no attempt to equalize individual shares on the basis of relative differences; and, it makes no attempt to equalize the number of persons represented by an individual legislator.

III. Harmonic Means Method

The method of Harmonic Means endeavors to equalize the representation of the various counties in so far as possible on the basis of the absolute, rather than the relative, difference in the number of persons represented by an individual legislator.

Proposed transfers under any reapportionment proposal can be judged for soundness by the application of the following test:

> Test: A transfer should be made from one county to another if, and only if, the absolute difference between the number of persons represented by the representatives from the two counties would be reduced by the transfer.

This method can again be demonstrated by the example used before with respect to Montgomery and Walker counties.
[fol. 209]

TABLE C

County	Population	R.	Proposal 1 No. Represented	R.	Proposal 2 No. Represented
Montgomery	169,302	4	42,302	5	33,842
Walker	54,211	2	27,105	1	54,211
	Absolute Inequality		15,197		21,369

Since the absolute inequality between the number of persons represented by an individual legislator is increased rather than decreased by the second proposal, it would be improper under this method to take a representative from Walker County and award it to Montgomery.

Summary: The method of Harmonic Means is a method which equalizes, as far as possible, the number of persons represented by an individual legislator by comparing the absolute difference between the legislators assigned to various counties. The method makes no attempt to equalize on the basis of the relative differences between the number of persons represented by an individual legislator, or to equalize the "individual shares" of the persons represented.

IV. The Methods of Smallest Divisors and Greatest Divisors

The methods of Greatest Divisors and Smallest Divisors are arbitrary methods which make no attempt to equalize either the number of persons represented by a legislator,

or the percentage of representation which the individual citizen has in the Legislature. The former is shown by Table IV. The latter can be worked from the same table. [fol. 210] The results of both are shown by Table IV.

Under the method of Smallest Divisors the legislative seat is transferred from one county to another if the absolute surplus of the two counties is reduced thereby.

Under the Greatest Divisor method transfer is made if the absolute deficiency would be reduced thereby.

In theoretically perfect apportionment no county would have either a surplus or a deficiency. These methods, although workable, do not take into consideration the relative size of the counties being compared in connection with the deficiency or the surplus.

The method of Smallest Divisors has a very strong bias in favor of small counties; the method of Greatest Divisors has a very strong bias in favor of large counties.

V. Selection of the Best Method

There is little difficulty in determining upon a method to be used computing reapportionment if the objective is known.

If the objective is simply to select the method that most favors small counties, the method of Smallest Divisors is the choice. If the objective is to show bias in favor of large counties, the method of Greatest Divisors should be adopted. If the objective is to equalize the number of persons represented by an individual legislator as nearly as may be [fol. 211] among the counties, the choice is between the method of Harmonic Means and the method of Equal Proportions. If the objective is to equalize the individual shares of the persons represented in the counties, then the choice must be between the method of Major Fractions and Equal Proportions. If the desire is to equalize as nearly as can be both the number of persons represented by an individual legislator and the individual shares of the persons residing in the several counties, then the method of Equal Proportions is the only method to be adopted.

In Alabama, under the 1960 census, the methods of Equal Proportions and Harmonic Means produce the same result.

The method of Major Fractions is also identical except for the assignment to Montgomery County of an additional member at the expense of Walker County.

VI. Other Mathematical Methods of Apportionment

Excluding purely arbitrary bracket methods, such as that employed by the Legislature of Alabama, several other mathematical methods have been recognized from time to time.

For many years reapportionments of Congress and state legislatures were based upon methods involving fixed ratios. Basic computations involved the discovery of the size of the absolute or perfect representational district. However, since no district would ever be perfect the problem always [fol. 212] involved the treatment of resulting fractions. Five basic methods of treating fractions were developed:

1. Included Fractions—Any fraction results in the awarding of a whole representative.

2. Rejected Fractions—No fractions are recognized; all fractions are discarded in making computations.

3. Harmonic Fractions—All fractions above the harmonic mean awarded a representative; those below the harmonic mean are not. The harmonic mean is determined by dividing the sum of the whole digit below and above by twice their product.

4. Geometric Fractions—All fractions above the geometric mean are awarded a representative; those below the geometric mean are denied a representative. The geometric mean is determined by taking the square root of the sum of the whole digit below and the whole digit above the number under consideration.

5. Major Fractions—All fractions above half are awarded a representative; all below one-half are denied a representative.

None of these methods will apply to a fixed size body. And all involve population paradoxes. For example, it [fol. 213] was found that in all of these methods an in-

crease in population might result in a reduction of the size of the legislative body.

From 1850 to 1910 the United States Congress used the method known as the Vinton method. This method worked as follows:

1. Divide the total population by the desired number of seats to get the "true ratio".
2. Divide the population of each state by the "true ratio" to get the "exact quota".
3. Assign a seat to each state with an "exact quota" of less than one.
4. Assign each state the number of seats shown by the whole number portion of the "exact quota".
5. Assign additional seats to states in order of the size of their fractions.

The Vinton method is not workable with respect to the Legislature the size of the State of Alabama. After one goes through step 4, he is already assigned 110 members of a Legislature that only has 106 members.

It is interesting to note that the Vinton method also proved undesirable in the case of Congress. The method is subject to what is known as the "Alabama Paradox." Even though the House of Representatives were increased in size, a state might, because of this increase in the size alone, lose representation although there were actually more representatives available for distribution among the states. It is even subject to what has been called the "Super Alabama [fol. 214] Paradox": a state may lose representation in the House because of an increase in the size of the House even though that state has increased in population.

Many other methods have been proposed and utilized from time to time based on various types of ratio arranged tests. However, each of these have been found subject to one or more of the population paradoxes and, therefore, have been considered unsatisfactory by those who have subjected them to careful study.

TABLE I - PRIORITY LIST AND ORDER OF ASSIGNMENTS UNDER METHOD OF EQUAL PROPORTIONS

County	Population	Priority Numbers - 0.70710678 2nd Member		0.40824829 3rd Memb.		0.28867513 4th Memb.		0.22360680 5th Memb.	
Jefferson	634,864	(1)	448,917	(2)	259,182	(4)	183,269	(5)	141,960
Mobile	314,301	(3)	222,244	(6)	128,313	(10)	90,731	(15)	70,280
Montgomery	169,210	(7)	119,650	(16)	69,080	(24)	48,847		37,837
Madison	117,348	(12)	82,978	(26)	47,907		33,875		26,240
Tuscaloosa	109,047	(13)	77,108	(29)	44,518		31,479		
Etowah	96,980	(17)	68,575	(36)	39,592				
Calhoun	95,878	(18)	67,796	(37)	39,142				
Talladega	65,495	(28)	46,312		26,738				
Lauderdale	61,622	(31)	43,573						
Morgan	60,454	(32)	42,747						
Dallas	56,667	(35)	40,070						
Walker	54,211	(39)	38,333						
Houston	50,718		35,863						
Lee	49,754		35,181						
Baldwin	49,088		34,710						
Marshall	48,018		33,954						
Colbert	46,506		32,885						
Russell	46,351		32,775						
Cullman	45,572		32,224						
DeKalb	41,417		29,286						

[fol. 215]

Population Multiplied By											
0.18257419 6th Memb.		0.15430335 7th Memb.		0.13363062 8th Memb.		0.11785113 9th Memb.		0.1 10th	
(8) 115,910	(9)	97,962	(11)	84,837	(14)	74,819	(19)		
(21) 57,383	(25)	48,498	(33)	42,000		37,041			
30,893									

Note 1.

Computation of Equal Proportions Priority List.

The priority list for the method of Equal Proportions obtained by dividing the population of each county by the geomet means of the successive numbers of representatives. After each county is assigned one representative, a county's priority posit for the assignment of a second representative is determined by dividing the population of the county by the geometric mean betw 1 and 2. Such geometric mean would be obtained by multiplying 1 2 and extracting the square root of the product; result, 1.4142 To determine a county's priority for the assignment of a third representative, its population would be divided by the geometric mean between 2 and 3; for a fourth, divide by the geometric mean between 3 and 4; etc. To simplify computation, these divisors a converted into equivalent multipliers by dividing each into the number 1 to secure the reciprocal of each. For example the reci cal of 1.4142136 is 0.70710678.

Note 2.

Use of Priority List.

The priority list can be used for any size legislativ body. With 106 members, after the geographical assignment of 6 members one to each county, the additional representatives are successively assigned on the basis of the priority numbers: the first to the county with the highest priority number; the second to the county with the next highest; etc., until all 39 have be assigned. The numbers in parenthesis show the order of assignme under this method.

Note 3.

For tables of multipliers and further explanations of computation and use of such priority lists see "A Survey of Meth of Apportionment in Congress," Edward V. Huntington, Department Mathematics, Harvard University, 76th Congress, Third Session, Senate Document No. 304. See also Shaw v. Atkins, 153 S.W.2d 4

SSIGNMENTS UNDER METHOD OF EQUAL PROPORTIONS

Priority Numbers - 0710678 Member		0.40824829 3rd Memb.		0.28867513 4th Memb.		0.22360680 5th Memb.
48,917	(2)	259,182	(4)	183,269	(5)	141,960
22,244	(6)	128,313	(10)	90,731	(15)	70,280
19,650	(16)	69,080	(24)	48,847		37,837
82,978	(26)	47,907		33,875		26,240
77,108	(29)	44,518		31,479		
68,575	(36)	39,592				
67,796	(37)	39,142				
46,312		26,738				
43,573						
42,747						
40,070						
38,333						
35,863						
35,181						
34,710						
33,954						
32,885						
32,775						
32,224						
29,286						

[fol. 215]

Population Multiplied By											
0.18257419 6th Memb.		0.15430335 7th Memb.		0.13363062 8th Memb.		0.11785113 9th Memb.		0.10540926 10th Memb.		0.09534626 11th Memb.	
(8) 115,910	(9)	97,962	(11)	84,837	(14)	74,819	(19)	66,921	(20)	60,532	
(21) 57,383	(25)	48,498	(33)	42,000		37,041		33,130		29,967	
30,893											

Note 1.

Computation of Equal Proportions Priority List.

The priority list for the method of Equal Proportions is obtained by dividing the population of each county by the geometric means of the successive numbers of representatives. After each county is assigned one representative, a county's priority position for the assignment of a second representative is determined by dividing the population of the county by the geometric mean between 1 and 2. Such geometric mean would be obtained by multiplying 1 by 2 and extracting the square root of the product; result, 1.4142136. To determine a county's priority for the assignment of a third representative, its population would be divided by the geometric mean between 2 and 3; for a fourth, divide by the geometric mean between 3 and 4; etc. To simplify computation, these divisors are converted into equivalent multipliers by dividing each into the number 1 to secure the reciprocal of each. For example the reciprocal of 1.4142136 is 0.70710678.

Note 2.

Use of Priority List.

The priority list can be used for any size legislative body. With 106 members, after the geographical assignment of 67 members one to each county, the additional representatives are successively assigned on the basis of the priority numbers: the first to the county with the highest priority number; the second to the county with the next highest; etc., until all 39 have been assigned. The numbers in parenthesis show the order of assignment under this method.

Note 3.

For tables of multipliers and further explanations of the computation and use of such priority lists see "A Survey of Methods of Apportionment in Congress," Edward V. Huntington, Department of Mathematics, Harvard University, 76th Congress, Third Session, Senate Document No. 304. See also Shaw v. Atkins, 153 S.W.2d 415 (1941).

Jefferson Extended	
0.08703883 - 12th Memb.	
(22) 55,258	
0.08006408 - 13th Memb.	
(23) 50,830	
0.07412493 - 14th Memb.	
(27) 47,059	
0.06900656 - 15th Memb.	
(30) 43,810	
0.06454972 - 16th Memb.	
(34) 40,980	
0.06065391 - 17th Memb.	
(38) 38,494	
0.05716620 - 18th Memb.	
36,293	
0.05407381 - 19th Memb.	
34,330	
0.05129892 - 20th Memb.	
32,568	
0.04879500 - 21st Memb.	
30,978	

TABLE V—DISTRIBUTION OF REPRESENTATIVES UNDER VARIOUS STANDARD STATISTICAL METHODS

	County	POPULATION	PERCENT OF POPULATION	PRESENT	EP/HM	MF	SD	GD
1	Jefferson	634,864	.1943	7	17	17	14	20
2	Mobile	314,301	.0962	3	8	8	7	9
3	Montgomery	169,210	.0518	4	4	5	4	5
4	Madison	117,348	.0359	2	3	3	3	3
5	Tuscaloosa	109,047	.0334	2	3	3	3	3
6	Etowah	96,980	.0297	2	3	3	3	3
7	Calhoun	95,878	.0293	2	3	3	3	3
8	Talladega	65,495	.0200	2	2	2	2	2
9	Lauderdale	61,622	.0189	2	2	2	2	1
10	Morgan	60,454	.0185	2	2	2	2	1
11	Dallas	56,667	.0173	3	2	2	2	1
12	Walker	54,211	.0166	2	2	1	2	1
13	Houston	50,718	.0155	1	1	1	2	1
14	Lee	49,754	.0152	2	1	1	2	1
15	Baldwin	49,088	.0150	1	1	1	2	1
16	Marshall	48,018	.0147	1	1	1	2	1
17	Colbert	46,506	.0142	1	1	1	1	1
18	Russell	46,351	.0142	2	1	1	1	1
19	Cullman	45,572	.0140	1	1	1	1	1
20	DeKalb	41,417	.0127	1	1	1	1	1
21	Chambers	37,828	.0116	2	1	1	1	1
22	Jackson	36,681	.0112	2	1	1	1	1
25	Tallapoosa	35,007	.0107	2	1	1	1	1
30	Elmore	30,524	.0093	2	1	1	1	1
31	Marengo	27,098	.0083	2	1	1	1	1
33	Pike	25,987	.0080	2	1	1	1	1
34	Clarke	25,738	.0079	2	1	1	1	1
38	Barbour	24,700	.0076	2	1	1	1	1
39	Butler	24,560	.0075	2	1	1	1	1
46	Sumter	20,041	.0061	2	1	1	1	1
47	Hale	19,537	.0060	2	1	1	1	1
50	Wilcox	18,739	.0057	2	1	1	1	1
53	Perry	17,358	.0053	2	1	1	1	1
56	Lowndes	15,417	.0047	2	1	1	1	1
58	Henry	15,286	.0047	2	1	1	1	1
64	Bullock	13,462	.0041	2	1	1	1	1

1. Counties listed in order of size with counties having only 1 representative at present and receiving no additional representative under any statistical method omitted below the 22nd ranked county by population.

2. With 106 members one representative holds a .0094 share of the legislative power in the House. Perfect district = 30,818.

3. Abbreviations use: EP = Equal Proportions; HM= Harmonic Means; MF = Major Fractions; SD = Smallest Divisors; GD = Greatest Divisors.

DISTRICT	POPULATION	VARIATION[1]
(Under Represented)		
Jefferson	634,864	+541,529
Mobile	314,301	+220,966
Montgomery	169,210	+ 75,875
Etowah St. Clair	122,368	+ 29,033
Madison *	117,348	+ 24,013
Tuscaloosa *	109,047	+ 15,712
Baldwin Escambia Monroe	104,971	+ 11,636
Lauderdale Limestone	98,135	+ 4,800
Lee Russell *	96,105	+ 2,770
Calhoun *	95,878	+ 2,543
(Over-Represented)		
Colbert Franklin * Marion	90,331	- 3,004
Blount Cullman Winston	85,879	- 7,456
Lawrence Morgan	84,955	- 8,380
Jackson Marshall	84,699	- 8,636
Fayette Lamar Walker	84,630	- 8,705
Butler		

DISTRICT	POPULATION	VARIATION[1]
Coffee Crenshaw Pike	70,479	-22,856
Henry Houston	66,004	-27,331
Tallapoosa Elmore	65,531	-27,804
Talladega	65,495	-27,840
Choctaw Clarke Washington	59,180	-34,155
Cherokee DeKalb	57,720	-35,615
Chambers Randolph	57,305	-36,030
Dallas	56,667	-36,668
Dale Geneva	53,376	-39,959
Pickens Sumter	41,923	-41,412
Bullock Macon	40,179	-53,156
Clay Cleburne Coosa	34,037	-59,298
Greene Hale	33,137	-60,198
Bibb Perry	31,715	-61,620
Marengo	27,098	-66,237
Barbour	24,700	-68,635

[fol. 220]

TABLE VI—PRESENT S
POPULATI

TABLE VI—PRESENT SENATE DISTRICTS SHOWING POPULATION VARIATIONS

Madison *	117,348	+ 24,013
Tuscaloosa *	109,047	+ 15,712
Baldwin Escambia Monroe	104,971	+ 11,636
Lauderdale Limestone	98,135	+ 4,800
Lee Russell *	96,105	+ 2,770
Calhoun *	95,878	+ 2,543
(Over-Represented)		
Colbert Franklin * Marion	90,331	- 3,004
Blount Cullman Winston	85,879	- 7,456
Lawrence Morgan	84,955	- 8,380
Jackson Marshall	84,699	- 8,636
Fayette Lamar Walker	84,630	- 8,705
Butler Conecuh Covington	77,953	- 15,382
Autauga Chilton Shelby	76,564	- 16,771
Elmore	65,531	-27,804
Talladega	65,495	-27,840
Choctaw Clarke Washington	59,180	-34,155
Cherokee DeKalb	57,720	-35,615
Chambers Randolph	57,305	-36,030
Dallas	56,667	-36,668
Dale Geneva	53,376	-39,959
Pickens Sumter	41,923	-41,412
Bullock Macon	40,179	-53,156
Clay Cleburne Coosa	34,037	-59,298
Greene Hale	33,137	-60,198
Bibb Perry	31,715	-61,620
Marengo	27,098	-66,237
Barbour	24,700	-68,635
Wilcox	18,739	-74,596
Lowndes	15,417	-77,918

1/ Variation form Perfect District of 93,335.
* Districts not altered by most nearly perfect reapportionment.

DISTRICT	POPULATION	VARIATION
(Under-Represented)		
Madison *	117,348	+24,013
Tuscaloosa *	109,047	+15,712
Mobile #1 *	104,767	+11,435
Mobile #2	104,767	+11,435
Mobile #3	104,767	+11,435
Etowah	96,980	+ 3,645
Limestone Morgan	96,967	+ 3,632
Lee Russell *	96,105	+ 2,770
Calhoun *	95,878	+ 2,543
Dale, Henry Houston	97,070	+ 2,415
Jackson, DeKalb Cherokee	94,401	+ 1,066
Blount, Coosa St. Clair Shelby	93,695	+ 360
Marshall Cullman	93,590	+ 255
(Over-Represented)		
Randolph Chambers Tallapoosa	92,302	- 1,034
Crenshaw, Butler Conecuh Escambia	90,742	- 2,593
Jefferson #1 *	90,695	- 2,640
Jefferson #2	90,695	- 2,640
Jefferson #3	90,695	-2,640
Jefferson #4	90,695	-2,640
Jefferson #5	90,695	-2,640
Jefferson #6	90,695	-2,640
Jefferson #7	90,695	-2,640
Colbert, Marion Franklin *	90,331	-3,004
Macon, Pike Bullock Barbour	90,266	-3,099
Marengo, Clarke Choctaw, Wilcox	89,445	-3,890
Dallas, Perry Lowndes	89,422	-3,913
Lamar, Sumter Pickens, Hale Greene	89,331	-4,004
Chilton, Bibb Autauga Elmore	89,313	-4,022
Clay, Cleburne Talladega	88,806	-4,529
Coffee, Geneva Covington	88,524	-4,811
Baldwin, Monroe Washington	86,832	-6,503
Lauderdale Lawrence	86,123	-7,202
Winston, Walker Fayette	85,217	-8,118
Montgomery #1*	84,605	-8,125
Montgomery #2	84,605	-8,125

TABLE VII—MOST NEARLY PERFECT REAPPORTIONMENT OF THE SENATE

Etowah	96,980	+ 3,645	Franklin *	90,331	-3,004
Limestone Morgan	96,967	+ 3,632	Macon, Pike Bullock Barbour	90,266	-3,099
Lee Russell *	96,105	+ 2,770	Marengo, Clarke Choctaw, Wilcox	89,445	-3,890
Calhoun *	95,878	+ 2,543			
Dale, Henry Houston	97,070	+ 2,415	Dallas, Perry Lowndes	89,422	-3,913
Jackson, DeKalb Cherokee	94,401	+ 1,066	Lamar, Sumter Pickens, Hale Greene	89,331	-4,004
Blount, Coosa St. Clair Shelby	93,695	+ 360	Chilton, Bibb Autauga Elmore	89,313	-4,022
Marshall Cullman	93,590	+ 255	Clay, Cleburne Talladega	88,806	-4,529
(Over-Represented)			Coffee, Geneva Covington	88,524	-4,811
Randolph Chambers Tallapoosa	92,302	- 1,034	Baldwin, Monroe Washington	86,832	-6,503
Crenshaw, Butler Conecuh Escambia	90,742	- 2,593	Lauderdale Lawrence	86,123	-7,202
Jefferson #1 *	90,695	- 2,640	Winston, Walker Fayette	85,217	-8,118
Jefferson #2	90,695	- 2,640	Montgomery #1*	84,605	-8,125
			Montgomery #2	84,605	-8,125

1/ Variation from perfect District of 93,335.

*Present District.

[fol. 225]

TABLE X—SENATE DISTRICTS UNDER BILL SHOWING POPULATION

DISTRICTS	POPULATION	VARIATION[1]	DISTRICT	POPULATION	VARIATION[1]
(Under Represented)					
Jefferson	634,864	+541,529	Lowndes * Dallas	72,084	- 21,251
Mobile	314,301	+220,966	Fayette * Walker	70,359	- 22,976
Montgomery	169,210	+ 75,875			
Madison	117,348	+ 24,013	Henry Houston	66,004	- 27,331
Tuscaloosa	109,047	+ 15,712	Tallapoosa Elmore	65,531	- 27,804
Baldwin Escambia	82,599	- 10,736	Talladega	65,495	- 27,840
Lauderdale Limestone	98,135	+ 4,800	Cullman * Winston	60,430	- 32,498
Etowah *	96,980	+ 3,645	Choctaw Clarke Washington	59,180	- 34,155
Lee Russell	96,105	+ 2,770	Cherokee DeKalb	57,720	- 35,615
Calhoun	95,878	+ 2,543	Chambers Randolph	57,305	- 36,030
(Over Represented)			Dale Geneva	53,376	- 39,959
Colbert			St. Clair * Blount	50,837	- 42,496
Franklin Marion	90,331	- 3,004	Barbour * Pike	50,687	- 42,648
Lawrence			Marengo * Sumter	47,139	- 46,196
Morgan	84,955	- 8,380	Coffee * Crenshaw	45,492	- 47,843
Jackson Marshall	84,699	- 8,636	Wilcox * Monroe	41,111	- 52,224
Butler			Pickens * Lamar	36,153	- 56,182
Conecuh Covington	77,953	- 15,382	Bullock Macon	40,179	- 53,156
Autauga			Clay Cleburne Coosa	34,037	- 59,298

TABLE X—SENATE DISTRICTS PROVIDED IN CRAWFORD-WEBB BILL SHOWING POPULATION VARIATIONS

Baldwin Escambia	82,599	- 10,736	Elmore	65,531	- 27,804
			Talladega	65,495	- 27,840
Lauderdale Limestone	98,135	+ 4,800	Cullman * Winston	60,430	- 32,498
Etowah *	96,980	+ 3,645	Choctaw Clarke Washington	59,180	- 34,155
Lee Russell	96,105	+ 2,770	Cherokee DeKalb	57,720	- 35,615
Calhoun	95,878	+ 2,543	Chambers Randolph	57,305	- 36,030
(Over Represented)			Dale Geneva	53,376	- 39,959
Colbert Franklin Marion	90,331	- 3,004	St. Clair * Blount	50,837	- 42,496
			Barbour * Pike	50,687	- 42,648
Lawrence Morgan	84,955	- 8,380	Marengo * Sumter	47,139	- 46,196
			Coffee * Crenshaw	45,492	- 47,843
Jackson Marshall	84,699	- 8,636	Wilcox * Monroe	41,111	- 52,224
			Pickens * Lamar	36,153	- 56,182
Butler Conecuh Covington	77,953	- 15,382	Bullock Macon	40,179	- 53,156
			Clay Cleburne Coosa	34,037	- 59,298
Autauga Chilton Shelby	76,564	- 16,771	Greene Hale	33,137	- 60,198
			Bibb Perry	31,715	- 61,620

1. Variation from Perfect District of 93,335.
* New districts created by this Act.

[fol. 230]

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

NORTHERN DIVISION

[Title omitted]

Excerpts From Testimony

Before:

Hon. Richard T. Rives, United States Circuit Judge;

Hon. Daniel H. Thomas, United States District Judge; and

Hon. Frank M. Johnson, Jr., United States District Judge;

At Montgomery, Alabama, July 16, 1962.

[fol. 231]

APPEARANCES:

For the Plaintiffs:

Charles Morgan, Jr., George Peach Taylor, and George W. Dean, Jr.

For R. E. Farr, Marshal Meadows, Jack Hopping, Jack Ryan, Max W. Morgan:

Cooper, Mitch and Crawford (Jerome A. Cooper and William Mitch).

For David J. Vann, Robert S. Vance, Richard P. Humphrey, Jr.:

David J. Vann and Robert S. Vance.

For John W. McConnell, Jr., Joseph N. Langan, William M. Williams, Jr., Garet Van Antwerp:

John W. McConnell, Jr.

For Harrell Hammonds:

Boswell and Smith (E. C. Boswell and Jack W. Smith).

For Sam Engelhardt and H. G. Rains:
Roy D. McCord and H. G. Rains.

For MacDonald Gallion and Bettye Frink:
Gordon Madison and Douglas S. Webb.

As Legal Advisor to Governor:
Robert P. Bradley.

As Amicus Curiae:
C. D. Sands.

(The above case coming on for hearing at Montgomery, Alabama, July 16, 1962, before the above-constituted court, the following proceedings were had:)

* * * * * * *

[fol. 239] Judge Rives: Call now the case of M. O. Sims and others against Bettye Frink, Secretary of State, on the motion for interlocutory injunction, and call on the plaintiffs to introduce such evidence as they care to introduce.

OFFERS IN EVIDENCE

Mr. Morgan: May it please the Court, first we would offer into evidence all sworn pleadings and affidavits on behalf of plaintiffs and intervenors in this cause. Secondly, we would request that the—a certified copy of Senate Bill 29 marked Plaintiff's Exhibit A be marked by the reporter.

The Clerk: Plaintiff's Exhibit number 1.

Mr. Morgan: Plaintiff's Exhibit number 1. And that a certified copy of House Bill 59 be marked Plaintiff's Exhibit number 2.

The Clerk: Plaintiff's Exhibit number 2.

Judge Rives: Hand them to the Clerk.

Mr. Morgan: Yes, sir.

The Clerk: Number 1?

Mr. Morgan: Number 1 is right on top.

[fol. 240] Judge Thomas: What is number 1?

Mr. Morgan: Number 1 is Senate Bill 29; number 2 is House Bill 59. We at this time offer into a—evidence a bound copy of the 1962 Senate as—census as Plaintiff's Exhibit 3.

The Clerk: Plaintiff's Exhibit number 3.

Judge Rives: Without objection to it, each of those will be received in evidence. I suppose there is no objection to any of them. If you gentlemen have any objections, make them at the time he offers them. Without objection each of these Exhibits is received in evidence.

* * * * * * *

[fol. 241] Oakley Melton, Jr., witness for the Plaintiffs, having been duly sworn, testified as follows:

Direct examination.

By Mr. Morgan:

Q. Question to the witness; what is your name?

A. Oakley Melton, Jr.

Q. Mr. Melton, what is your title?

A. I am the Clerk of the Alabama House of Representatives.

[fol. 242] Q. Mr. Melton, do you have in your hand a document or a group of documents—what do you hold there, sir?

A. My subpoena calls for me to bring copies of all reapportionment bills which were introduced in the Alabama House of Representatives in the recent special session, and I have copies of such bills.

Q. Are they marked, Mr. Melton?

A. Yes, sir. They are marked E-1 through E-28; that is designation I put on them out in the hall. The official bill number and the authors of the bill appear at the top of each, each copy of each bill.

Q. Are those true and correct copies of each bill introduced in the special session of the Alabama Legislature—

A. In the House.

Q. —1962?

A. In the House.

Q. In the House of Representatives?

A. Yes, sir; yes, sir.

Offer in Evidence.

Mr. Morgan: We offer these bills as Exhibit for the plaintiffs number 5, 1 through 28.

Judge Rives: Those are all of the reapportionment bills—

Mr. Morgan: Yes, sir; every reapportionment bill—

Judge Rives: —considered in the House of Representatives?

[fol. 243] Mr. Morgan: In the House of Representatives, introduced in the the House of Representatives at the special session.

Judge Rives: I presume you make the same objection.

Mr. Madison: Same objection, your honor.

Judge Rives: It will be the same ruling; we will overrule the objection.

Q. Mr. Melton, I want to ask you one question at this time; as Clerk of the House of Representatives of the Legislature of Alabama, what is your—what are your duties?

A. We have charge of all the clerical records, the preparing of the Journals, the processing of the Acts, the processing of the bills, work with all the employees of the House, prepare the final Acts, write the Journals, and chief clerical officer, I guess would be a good way to summarize my duties.

Q. And custody and control of these records comes within the purview of your official duties as Clerk of the House of Representatives?

A. Yes, sir; I maintain custody and control of the records.

Q. Mr. Melton, do you have a copy of what I term the Special Primary Law?

A. Here is a copy of House Bill 130 as finally passed by the Legislature.

Q. Has that bill been signed as yet by the Governor, or do you know, sir?

A. My information is that it has not yet been signed, [fol. 244] has not yet been acted on by the Governor.

Q. Is the copy which you hold in your hand a true and correct copy of House Bill 130, introduced into and passed by the Alabama House of Representatives at a special session, 1962?

A. No, sir; this is not a copy of it as originally introduced; this is a copy of it as finally passed by the—both houses.

Q. That will be fine—as passed?
A. Yes, sir.

* * * * * * *

[fol. 247] RALPH EAGERTON, JR., witness for the Plaintiffs, having been duly sworn, testified as follows:

Direct examination.

By Mr. Taylor:

Q. State your name, please?
A. Ralph Eagerton, Jr.
Q. What is your occupation?
A. Revenue Research Analyst Two with the Alabama Department of Revenue.
[fol. 248] Q. How long have you been with the Department?
A. Sixteen years.
Q. Have you, Mr. Eagerton, made any studies of the revenue laws of the State of Alabama.
A. Yes, sir.
Q. More particularly, have you made studies of the amounts of monies collected from various taxes and deposited into the Alabama Special Educational Trust Fund?

OBJECTIONS TO TESTIMONY

Mr. Madison: Your honor, I would like to interpose an objection to this line of questioning, because I don't believe it is material to any of the issues in this case. It has not been disclosed either to the Court or to us wherein it is claimed that it is material, but seems we might be getting a little far afield.

Judge Rives: What is the materiality of this?

PLAINTIFF'S OFFER OF PROOF RE TESTIMONY AND COURT'S RULING THEREON

Mr. Taylor: May it please the Court, we would offer to show by this witness and by one other witness the discrimination against the plaintiffs individually and as a class, residents of Jefferson County, in the manner in which taxes

are levied, the monies received from taxpayers in Jefferson County, and the way that it is distributed, bearing on the question of plaintiffs' rights under the Fourteenth Amendment, and in particular the due process clause.

Judge Rives: On the theory that is a result of—of malapportionment of the Legislature?

Mr. Taylor: Yes, sir.

[fol. 249] (The Court conferred.)

Judge Rives: It is the present thinking of the Court that if there is in fact an invidious discrimination that prejudice is not necessary to be shown, and that would unduly prolong this trial to go into it, a showing of prejudice. We will sustain the objection to the evidence.

* * * * * * *

[fol. 355] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

NORTHERN DIVISION

[Title omitted]

ORDER OF SUBSTITUTION—July 18, 1962

It appearing to this Court that the defendant Sam Engelhardt has ceased to be Chairman of the Alabama State Democratic Executive Committee and that he has been succeeded in that office by Roy Mayhall; that C. O. Vardaman has ceased to be Chairman of the Alabama State Republican Executive Committee and that he has been succeeded in that office by John Grenier; and that O. P. Drake has ceased to be Secretary of the Alabama State Republican Executive [fol. 356] Committee and that he has been succeeded in that office by Perry O. Hooper, it is the opinion of this Court that, pursuant to the provisions of Rule 25(d), Federal Rules of Civil Procedure:

(1) The name "Roy Mayhall, Chairman of the Alabama State Democratic Executive Committee" be substituted for

"Sam Engelhardt, Chairman of the Alabama State Democratic Executive Committee";

(2) That the name "John Grenier, Chairman of the Alabama State Republican Executive Committee" be substituted for "C. O. Vardaman, Chairman of the Alabama State Republican Executive Committee"; and

(3) That the name "Perry O. Hooper, Secretary of the Alabama State Republican Executive Committee" be substituted for "O. P. Drake, Secretary of the Alabama State Republican Executive Committee," in all places where said names appear in the pleadings in this cause.

It is, therefore, the Order, Judgment and Decree of this Court that "Roy Mayhall, Chairman of the Alabama State Democratic Executive Committee" be substituted for "Sam Engelhardt, Chairman of the Alabama State Democratic Executive Committee" in this cause in each instance where said substitution is appropriate.

It is the further Order, Judgment and Decree of this Court that "John Grenier, Chairman of the Alabama State Republican Executive Committee" be substituted for "C. O. Vardaman, Chairman of the Alabama State Republican Executive Committee" in this cause in each instance where said substitution is appropriate.

It is the further Order, Judgment and Decree of this Court that "Perry O. Hooper, Secretary of the Alabama State Republican Executive Committee" be substituted for "O. P. Drake, Secretary of the Alabama State Republican Executive Committee" in this cause in each instance where said substitution is appropriate.

Done, this the 18th day of July, 1962.

Richard T. Rives, United States Circuit Judge,
Daniel H. Thomas, United States District Judge,
Frank M. Johnson, Jr., United States District Judge.

[fol. 357] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION
Civil Action No. 1744-N

M. O. SIMS, FRED A. BEAM, WYLIE JOHNSON, G. R. SOUTHARD, MILES S. LEE, PAUL FRIEDMAN, WILLIAM LINDSAY WILLIAMS, WILLIAM P. SHAW, JR., PRENTICE W. THOMAS, RICHARD D. TANNEHILL, PAUL M. BYRNE, DAVID R. BAKER, CHARLES MORGAN, JR., and GEORGE PEACH TAYLOR, for themselves jointly and severally, and for all others similarly situated, Plaintiffs,

R. E. FARR, MARSHALL MEADOWS, JACK HOPPING, JACK RYAN, MAX W. MORGAN, DAVID J. VANN, ROBERT S. VANCE, RICHARD P. HUMPHREY, JR., JOHN W. McCONNELL, JR., JOSEPH N. LANGAN, WILLIAM M. WILLIAMS, JR., and GARET VAN ANTWERP, Intervening Plaintiffs,

vs.

BETTYE FRINK, Secretary of State of the State of Alabama; HARRELL HAMMONDS, Judge of Probate of Lowndes County, Alabama; JOHN A. SANKEY, Judge of Probate of Montgomery County, Alabama; J. PAUL MEEKS, Judge of Probate of Jefferson County, Alabama; JOHN GRENIER, Chairman of the Alabama State Republican Executive Committee; PERRY O. HOOPER, Secretary of the Alabama State Republican Executive Committee; ROY MAYHALL, Chairman of the Alabama State Democratic Executive Committee; H. G. RAINS, Secretary of the Alabama State Democratic Executive Committee; MACDONALD GALLION, Attorney General of the State of Alabama, Defendants.

OPINION—July 21, 1962

Rives, Circuit Judge, and Thomas and Johnson, District Judges.

Plaintiffs and the plaintiff-intervenors, as citizens of the United States and of the State of Alabama, and as taxpayers and duly qualified and registered voters in said State and in the Counties of Jefferson and Mobile, jointly and severally bring this action in their own behalf and in [fol. 358] behalf of all other voters in the State of Alabama who are similarly situated. The defendant Bettye Frink is sued in her capacity as Secretary of State for the State of Alabama and as a State constitutional official, who is charged with certain duties and responsibilities concerning the election of members of the Alabama Legislature. The defendants Hammonds, Sankey and Meeks are the duly elected, qualified and acting probate judges of Lowndes, Montgomery and Jefferson Counties, respectively. They are sued in their official capacity as constitutional officers for the State of Alabama and as representatives of all the probate judges of Alabama, who are charged by law with performing and exercising certain duties and powers in connection with the nomination and election of members of the Alabama Legislature. The defendants Grenier and Mayhall are the duly elected, qualified and acting Chairmen of the Alabama State Republican Executive Committee and of the Alabama State Democratic Executive Committee, respectively. They are made defendants in their official capacity as Chairmen of the Executive Committees of said political parties, who are charged by law in the State of Alabama with performing certain duties and functions in connection with the selection, nomination and election of members of the Alabama Legislature. The defendants Hooper and Rains are the duly elected, qualified and acting Secretaries of the Alabama State Republican Executive Committee and the Alabama State Democratic Executive Committee, respectively. Each is sued in his official capacity as an officer of the political party as indicated and is charged by the law of Alabama with performing certain functions and duties in connection with the selection, nomination and election of the Alabama legislators. The defendant MacDonald Gallion is the duly elected, qualified and acting Attorney General of the State of Alabama, who is charged by the law of the State of Alabama with performing certain duties and functions in

connection with the nomination and election of members of the Alabama Legislature.

The plaintiffs[1] bring this action in their own behalf and in behalf of all registered and qualified voters similarly situated, for a declaration of their rights concerning the apportionment of representatives and senators among the counties of the State of Alabama and for such relief as may [fol. 359] be proper to assure them, and all other voters of the State of Alabama that are similarly situated, free and equal suffrage and equal protection of the laws which plaintiffs claim have been for many years denied them by the defendants and their predecessors in office. The plaintiffs say that this Court has jurisdiction of this cause and that they have a right to institute this cause under 17 Stat. at Large 13 and 16 Stat. at Large 144; 42 U. S. C. §§ 1983 and 1988, as follows:

> "§ *1983. Civil action for deprivation of rights* Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."
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> • • • • • • •
>
> "§ *1988. Proceedings in vindication of civil rights* The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, . . ."

The plaintiffs, as citizens of the United States and of the State of Alabama, base their claim that they are denied the equal protection of the law accorded them by the Four-

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[1] The term "plaintiffs" will be used throughout this opinion to include the original plaintiffs and all intervening plaintiffs.

teenth Amendment to the Constitution of the United States by virtue of the debasement of their votes, since the Legislature of the State of Alabama has failed and continues to fail to reapportion itself since 1900. Plaintiffs say that the failure of the Alabama Legislature to reapportion itself violates §§ 198, 199 and 200 of the Alabama Constitution of 1901.[2]

In our order of March 30, 1962, setting for hearing the application for interlocutory injunction we indicated our tentative but unanimous opinion that no injunction was required prior to the primary elections, then set for May, 1962, in order for citizens of the State represented by the plaintiffs in this case to be accorded any constitutional rights asserted in time for the exercise of such rights at the general election in November, 1962. In that order we [fol. 360] expressed the further view that there was time for the Legislature of Alabama to comply with its duty prescribed by the Constitution of 1901 of the State of Alabama, and that no action on the part of this Court which was not absolutely essential for the protection of any constitutional rights asserted in the complaint should be taken before the Legislature of Alabama had had a further reasonable but prompt opportunity to comply with its duty. The application for interlocutory injunction was assigned for hearing for April 14, 1962.

On that date we reiterated the same views in continuing the application for interlocutory injunction and resetting it for hearing on July 16, 1962. In that order, for the guidance of counsel and for such aid as we might be, we made certain additional remarks to which we now adhere, as follows:

> "We remain of the same opinion that was expressed in the order setting the application for hearing, viz: until the Legislature has had a further reasonable but prompt opportunity to comply with its duty under Sections 199 and 200 of the Constitution of Alabama, this Court should take no action not absolutely essential for the protection of the constitutional rights as-

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[2] See Appendix "A."

serted in the complaint; and no ruling before the primary elections of May 1962 appears essential.

"The application for interlocutory injunction pertains to the conduct of both the primary elections of May 1962 and the general election of November 1962. That application is therefore continued and re-set for hearing at 10 o'clock a. m. on Monday, July 16, 1962. The hearing cannot be set for a much later date because, if this Court is to act effectively, some action must be taken in ample time before the general election of November 1962.

"For the guidance of counsel and for such aid as we may be in solving the troublesome but important subject of this litigation, we make the following additional remarks:

"(1) Under the opinion of the Supreme Court of the United States in *Baker* v. *Carr*, No. 6, October Term, 1961, decided March 26, 1962, it seems clear to us that: (a) this Court has jurisdiction of the present action; (b) the complaint as amended states a justiciable cause of action; (c) the plaintiffs have standing to challenge the Alabama apportionment statutes.

"(2) We have no disposition to discourage the introduction of evidence by any party, and in the ordinary case our opinion as to whether the plaintiffs will be entitled to appropriate relief should await the intro- [fol. 361] duction of evidence. However, we take judicial notice of the same facts which are well known to the Justices of the Supreme Court of Alabama and to the people of this State, as expressed on two different occasions in opinions of the Justices.

> "'We judicially know that the population of the various counties of this state has changed during the years which have intervened since the Constitution of 1901 was adopted, so that the representation as provided in §§ 1 and 2 of Title 32, Code 1940, cannot be said to be on a population basis.'

Opinion of the Justices of the Supreme Court of Alabama, No. 117, August 14, 1950, 47 So. 2d 714, 717.

"'We know, and the people of this State know, that our Constitution says that it *shall* be the duty of the legislature to reapportion the legislature according to population after each decennial census and that this constitutional mandate of the Constitution of 1901 has never been complied with.'

Opinion of the Justices of the Supreme Court of Alabama, No. 148, July 11, 1955, 81 So. 2d 881, 887.

"(3) The controlling constitutional formula which runs throughout the Constitution of Alabama is thus expressed in the last sentence of Section 284 of said Constitution: 'Representation in the legislature shall be based upon population, and such basis of representation shall not be changed by constitutional amendments.' See also Sections 198 to 201, inclusive. If that formula is met, then there can be no valid objection under the equal protection clause or any other part of the Constitution of the United States, which is, of course, the supreme law of the land, binding alike on this Court and on the Legislature of Alabama (Article VI, Clauses 2 and 3 of the Constitution of the United States). It is necessary that any action taken by the Legislature comply with constitutional standards, and it is important that such standards be met not half-heartedly but fully, because once there has been a legislative reapportionment, unless it so completely fails to meet constitutional standards that it must be set aside by court order, it will not be subject to alteration until the next session of the Legislature after the decennial census in 1970 (Constitution of Alabama, Section 198).

"(4) In the event that the Legislature of Alabama complies with its duty before the next hearing, and this Court can so find, then no further action will be needed in this case and the case can be dismissed. If the Legislature does not act, or if its action does not meet constitutional standards, then we will be under a clear duty to take some action in time to take effect before the general election of November 1962. Such

action, however, should be held to the minimum that is necessary for the citizens of Alabama to be accorded their constitutional rights.

"(5) To that end, it is fair to advise the parties of our present thinking that we would then follow the plan suggested in the concurring opinion of Mr. Jus-
[fol. 362] tice Clark in *Baker* v. *Carr, supra*:

> "'One plan might be to start with the existing assembly districts, consolidate some of them, and award the seats thus released to those counties suffering the most egregious discrimination. Other possibilities are present and might be more effective. But the plan here suggested would at least release the strangle hold now on the Assembly and permit it to redistrict itself.'

"(6) While retaining jurisdiction, we could then defer further decision or action to afford the newly elected Legislature full opportunity to heed the constitutional mandate to reapportion. When that has been done the duty resting on us will be at an end and the case can be dismissed."

On July 12, 1962, an Extraordinary Session of the Legislature of Alabama passed a proposed constitutional amendment, commonly referred to as the "67-Senator Amendment,"[3] this proposed constitutional amendment being subject to the ratification of the voters of the State of Alabama in an election to be held in November, 1962. On the same date, the Governor of the State of Alabama signed into law the "Crawford-Webb Bill,"[4] as passed by the Alabama Legislature, which has been referred to as a "stand-by" legislative act to take effect in the event the voters of the State of Alabama refuse to ratify the proposed "67-Senator Amendment," or this Court refuses to

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[3] Officially known as Senate Bill 29 and attached hereto as Appendix "B."

[4] Officially known as House Bill 59 and attached hereto as Appendix "C."

accept said "67-Senator Amendment" as effective action that complies with federal constitutional requirements as laid down in *Baker* v. *Carr*, 369 U. S. 186. The final submission on the motion for interlocutory injunction was on July 16, 1962. This submission was upon the pleadings —a part of which were verified, the affidavits and exhibits thereto, the oral testimony and certain exhibits thereto, and the briefs and arguments of the parties.

It has been generally conceded throughout this litigation by all the parties that the present apportionment of both Houses of the Legislature of the State of Alabama constitutes "invidious discrimination" in violation of the Equal Protection Clause of the Fourteenth Amendment. The invidiousness of the situation is demonstrated by Appendix "D" to this opinion, this appendix listing each of the 67 counties in the State of Alabama, the population of each [fol. 363] county in 1901 when the Legislature was last reapportioned, the present population of each county, and the representatives authorized from each county to the Alabama House of Representatives; and by Appendix "E" listing the 35 senatorial districts, the population of each district in 1900 and the population of each district in 1960 —each senatorial district in Alabama being authorized one representative to the Senate.

Upon this submission, it becomes our duty: (1) to determine whether those Acts comply with constitutional standards and (2) in the event we are forced, however reluctantly, to find that they do not comply with the guaranty of the equal protection of the laws, then to decide what remedies are available to and should be utilized by this Court.

In proceeding to the performance of that duty we would make a few preliminary comments. It is not our function or desire to criticize the present or preceding legislatures for any failure to heed the clear mandate both of the Constitution of the United States and of the Constitution of Alabama. Nor would we criticize the Alabama courts for refusing to afford relief prior to *Scholle* v. *Hare*, 1962, 369 U. S. 429 (see *Waid* v. *Pool*, 225 Ala. 441, 51 So. 2d 869), or even since that decision (see *Ex parte Rice*, —— Ala. ——, May, 1962). However, in the light of the constitu-

tional principles announced in *Baker* v. *Carr, supra,* such failures on the parts of the legislative and judicial departments of the State have left the plaintiffs no alternative but to ask the federal courts to protect the constitutional rights of the citizens of Alabama.

Each of the cases which has arisen since *Baker* v. *Carr, supra,* has agreed that the test of compliance with the guaranty of the equal protection of the laws is whether the inequality in voting power is a result of "invidious discrimination." *Sanders* v. *Gray,* 203 F. Supp. 158 (April, 1962); *Toombs* v. *Fortson,* C. A. No. 7883, N. D. Ga., May 25, 1962; *Moss* v. *Burkart,* No. 9130, W. D. Okla., April 30, 1962 and June 19, 1962. In *Sanders* v. *Gray, supra,* Judge Bell considered the test rather fully, and arrived at the conclusion that the Supreme Court has now adopted the test urged by Mr. Justice Douglas in his dissenting opinion in *South* v. *Peters,* 1950, 339 U. S. 276, 281, that there shall [fol. 364] be no inequality in voting power by reason of invidious discrimination.[5]

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[5] In the course of that opinion the Justice had commented that, "The creation by law of favored groups of citizens and the grant to them of preferred political rights is the worst of all discriminations under a democratic system of government." 339 U. S. at 279. In like vein, Professor James E. Larson of the Bureau of Public Administration of the University of Alabama begins his recent work on "Reapportionment and the Courts" with such statements as:

"Any citizen, if asked, would in all probability admit to a sense of outrage at the suggestion that his vote be counted for less in the election of legislative representatives than the vote of any other citizen. The principle that a vote cast be counted of equal value to any other is so fundamental to our understanding of democracy as to pass unchallenged. Yet, in practice, the system of legislative representation in one American state after another shows a tenacious disregard for this rudimentary requirement of political equality."

and

"In a democracy, any action or condition which affects the right to vote is an important matter. It is puzzling, therefore, that unequal representation in the state legislature is not a subject to grip the interest and stir the emotions of the public. Aggrieved citizens no longer rise in force to march on state capitals with the complaint that lack of adequate representation is a cause of sufferings which are 'tedious and beyond the patience of a Job to endure.' Drift of taxing power to Washington, apathy, sophisti-

Judge Bell continued to formulate a test for invidiousness on a consideration of all relevant factors such as rationality or irrationality of state policy, whether or not the system is arbitrary, whether or not the system has a historical basis in our political institutions—federal or state, the presence or absence of political remedy, and the delicate relationship between the federal and state governments under the Constitution.

This Court has reached the conclusion that neither the "67-Senator Amendment," nor the "Crawford-Webb Act" meets the necessary constitutional requirements. We find that each of the legislative acts, when considered as a whole, is so obviously discriminatory, arbitrary and irrational that it becomes unnecessary to pursue a detailed development of each of the relevant factors of the test.

While it is true that this Court is not here primarily concerned with the constitutionality of any of the proposed action of the Legislature as measured by Alabama constitutional standards and requirements, this Court is here concerned with whether or not the Alabama Legislature, in [fol. 365] taking the action defendants now propose to this Court as "effective legislation," has complied with the constitutional standards required by the Constitution of the United States. In addition, this Court recognizes that there are State constitutional standards to be applied and failure to apply those State constitutional standards by this Court, after it has already taken jurisdiction in this case, will amount to a failure to recognize the principles laid down by the Supreme Court of the United States in *Louisville & Nashville Railroad Co.* v. *Garrett*, 231 U. S. 298, and followed in *Wofford Oil Co.* v. *Smith*, 263 F. 396.

The pertinent portion of §284 of the Constitution of Alabama is as follows:

> "... Representation in the legislature shall be based upon population, and such basis of representation shall not be changed by constitutional amendments."

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cation, and some cynicism about state government have made such displays out of place and in bad taste. Yet state legislatures today stand as a monumental denial of the principles to which we are committed."

This provision in §284 has never been considered by the courts of the State of Alabama in an adversary proceeding. This Court is informed that during the interval provided by this Court in its order of April 14, 1962, the Legislature refused to inquire of the Supreme Court of the State of Alabama whether this provision in the Constitution of the State of Alabama could be changed by constitutional amendment as the "67-Senator Amendment" proposes. This section of the Constitution of the State of Alabama has been treated, however, by several Justices of the Supreme Court of Alabama in nonadversary proceedings as follows:

(1) *In re Opinion of Justices*, No. 116, 47 So. 2d 713 (1950), where three of the present members of the Alabama Supreme Court, plus one member now deceased,[6] stated:

> "The official proceedings of the Constitutional Convention of 1901 (see Vol. 3, Official Proceedings, Constitutional Convention of 1901, pages 3906-3924) clearly disclose the purpose of the convention to withhold from the legislature the authority to propose amendments to the organic law which would effectively *change the basis of representation in the legislature*. Unquestionably, the above quoted provision of section 284, supra, withholds from the legislature the power and authority to initiate amendments to the Constitution which would have the effect of changing the basis of representation in the legislature to other than a population basis."

[fol. 366] (2) *Opinion of the Justices*, No. 148, 81 So. 2d 881 (1955), where four of the Alabama Supreme Court Justices, only two of whom are now on the Court,[7] stated:

> "Surely it is self evident that with the ultimate sovereignty residing in the people, they can legally and lawfully remove any provision from the Constitution which they previously put in or ratified, even to the

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[6] Justices Brown, Livingston, Lawson and Simpson.

[7] Justices Simpson, Stakely, Merrill and Mayfield.

extent of amending or repealing one of the sections comprising our Declaration of Rights, even though it is provided that they 'shall forever remain inviolate.'"

In the same opinion three of the Alabama Supreme Court Justices, all of whom are presently members of that Court,* stated:

"The only way that the people can amend or change the last sentence of Section 284, supra, is through a constitutional convention. It cannot be done by constitutional amendment."

The manifest uncertainty of the legality of the proposed constitutional amendment, as measured by State standards and as demonstrated by the above-quoted opinions of the Justices of the Supreme Court of Alabama, forces this Court to the conclusion that the Legislature may not have complied with the State Constitution in the passage of such an Act.

That portion of the proposed constitutional amendment providing a senator for each of the 67 counties of the State if approved by the voters would serve to make the discrimination in the Senate even more invidious than at present. Under the proposed amendment, senators elected by 20% of the State population could effectively block any proposed legislation, and senators elected by 14% of the population could prevent the submission of any future proposal to amend the Constitution of the State of Alabama. The present control of the Senate by members representing 25.1% of the people of Alabama would be reduced to control by members representing 19.4% of the people of the State. The 34 smallest counties, whose total population is less than that of Jefferson County, would have a majority of the total membership of the Senate. The only conceivable rationalization of this provision is that it is based on political units of the State and is analogous to the requirement [fol. 367] of the Constitution of the United States that the Senate "shall be composed of two Senators from each

* Justices Livingston, Lawson and Goodwyn.

State." Article I, Section 3, Clause 1, superseded by Amendment 17. The analogy cannot survive the most superficial examination into the history of the requirement of the Federal Constitution and the diametrically opposing history of the requirement of the Alabama Constitution that representation shall be based on population. Nor can it survive a comparison of the different political natures of states and counties. It has been held repeatedly in Alabama that a county derives its power from the State; that a county is but a governmental agency, possessing no power and subject to no duty not originating from the law by which it is created and in which its functions are defined. The Alabama courts have said that a county is nothing more than an involuntary political or civil division of the State, created by statute to aid in the administration of government; that whatever power the county possesses, or whatever duty it is required to perform, originates solely in the statutes creating it, or in the statutes declaring its power and duty. *Askew* v. *Hale County*, 54 Ala. 639; *State* v. *Butler*, 225 Ala. 191, 142 So. 531; *Tuscaloosa County* v. *Alabama Great Southern R. R. Co.*, 227 Ala. 428, 150 So. 328; *Montgomery* v. *State*, 228 Ala. 296, 153 So. 394; *Moore* v. *Walker County*, 236 Ala. 688, 185 So. 175.

In a previous order we indicated our view that the controlling or dominant provision of the Alabama Constitution on the subject of representation in the Legislature was the last sentence of § 284 heretofore quoted. To some extent that thought is emphasized separately as to the House by §§ 198 and 199 and as to the Senate by § 200, but at the same time diluted by other and somewhat conflicting requirements. As to the House, it is provided that each county shall be entitled to one representative and that the total shall be not more than 105 plus the number of new counties subsequently created, so that the total membership of the House is now 106, of which 67 are distributed one to each of the 67 counties, leaving only 39 to be apportioned among the several counties according to the number of inhabitants in each. As to the Senate, it is provided by § 197 that, "The whole number of senators shall be not less than one-fourth or more than one-third of the whole number of representatives." At present the number of senators is the maximum.

[fol. 368] 35. Section 200 provides for "as many senatorial districts as there are senators, which districts shall be as nearly equal to each other in the number of inhabitants as may be, and each shall be entitled to one senator, and no more." It further provides that, "No county shall be divided between two districts, and no district shall be made up of two or more counties not contiguous to each other."

If what we have called the controlling or dominant provision that representation shall be based upon population should be met completely in both Houses, then, without doubt, the State would accord to every person the equal protection of the laws in compliance with the Fourteenth Amendment. It is difficult to determine how far that overriding requirement of the Federal Constitution can be met and also comply with each of the more detailed requirements of the Alabama Constitution. Certainly an earnest effort must be made to meet all such requirements, and it is only in the event that proves impossible that the Supremacy Clause of the Federal Constitution would cause any irreconcilable and conflicting requirement of the State Constitution to give way. Such a result must appear necessary beyond a reasonable doubt before any of the requirements of the State Constitution can be ignored. The result is that we must approach the task of finding a remedy for the existing invidious discrimination within the framework of each of the detailed requirements of the Alabama Constitution.

Those requirements make it obvious that in *neither* the House nor the Senate can representation be based strictly and entirely upon population. There must be differences in the values of votes from the several counties in each House of the Legislature. In *Toombs* v. *Fortson*, *supra*, that court concluded that it must apply the "invidious discrimination" test "in determining whether the plaintiffs' rights under the equal protection clause have been violated by a system of legislative representation in either or both of the chambers of the State Legislature in such manner or to such a degree as to constitute invidious discrimination as to them."

In that case the court further stated that ". . . we do not find any authoritative decision by the Supreme Court that

[fol. 369] causes us to require that in order to give the plaintiff his constitutional rights the state legislature must be constituted of two Houses, both of which are elected according to population." It conceded, however, that there was some basis for that argument in the light of *Scholle* v. *Hare, supra,* especially when consideration is given to Mr. Justice Douglas's dissenting opinion in *MacDougall* v. *Green,* 335 U. S. 281, at pages 287, 289. See also *The Maryland Committee for Fair Representation, et al.* v. *Tawes, Governor,* No. 13920 Equity, from the Circuit Court for Anne Arundel County, Md., filed June 28, 1962. In the present case that doubtful question is further complicated by the detailed requirements of the Alabama Constitution which, as has been said, make it impossible for the representation in *either* House to be based strictly and entirely upon population. The result may well be that representation according to population *to some extent* must be required in *both* Houses if invidious discrimination in the legislative systems as a whole is to be avoided. Indeed, as has also been observed, it is the policy and theme of the Alabama Constitution to require representation according to population in both Houses as nearly as may be, while still complying with more detailed provisions. So long as only extremely partial representation according to population can be achieved in the House, we do not believe that the principle of representation according to population can be completely abandoned in the Senate, as would be done under the "67-Senator Amendment." The provision that the Senate shall consist of a senator from each of the 67 counties, in our opinion, in the light of the other provisions of the Alabama Constitution governing representation in the Legislature, would result in invidious discrimination and a denial of the equal protection of the laws. Compare *Brewer* v. *Gray,* Fla. 1956, 86 So. 2d 799. These reasons are in addition to those heretofore given in this opinion.

The proposed reapportionment of the Senate in the "Crawford-Webb Act" is a step in the right direction, but an extremely short step. It does correct a few of the most glaring discriminations by eliminating such single county senatorial districts as Lowndes with a population of 15,417, Wilcox with a population of 18,739, Barbour with a popu-

[fol. 370] lation of 24,700, and Marengo with a population of 27,098, and puts those small counties into multiple county districts. It makes Etowah, with a population of 96,980, into a single county district. The Act embodies some other improvements on the present system of representation in the Senate. On the other hand, this piece of legislation keeps the control of the Alabama Senate in 27.6% of the people of the State of Alabama. This represents an improvement of only 2.6% over the present control of 25.1%. The vote of a citizen of the Bibb and Perry senatorial districts would be worth twenty times that of a citizen in the Jefferson senatorial district. The vote of a citizen in the 6 smallest senatorial districts would be worth fifteen or more times that of a citizen in the Jefferson senatorial district. In 22 districts, a citizen would have eight or more times as much representation as a citizen residing in the Jefferson district. Other isolated variations are: Lauderdale (population 61,622) is given one-half a senator by being placed with Limestone (population 36,513), making a district of over 98,000 people. This is opposed to Pickens (population 21,882) and Lamar (population 14,271), having one-half a senator each, with a total population of 36,153. To aggravate this, Colbert (population 46,506), Franklin (population 21,988) and Marion (population 21,837), having a total population of over 90,000, are given one-third a senator, while Henry (population 15,286), Hale (population 19,537), Bibb (population 14,357), Perry (population 17,358), Bullock (population 13,462), Lowndes (population 15,417), Marengo (population 27,098) and Sumter (population 20,041), all in the Black Belt area, are each placed in two-county senatorial districts and thereby given one-half a senator. An analysis of the "Crawford-Webb Act" as it proposes to reapportion the Alabama Senate is attached hereto as Appendix "F." In summary as to the Senate, at best the "Crawford-Webb Act" represents a slight improvement over the present system of representation.

The "Crawford-Webb Act" as it concerns the Alabama House of Representatives is totally unacceptable. The proposed allocation of seats in the House adopts the Alabama constitutional requirement of one per county, with the remaining 39 seats allocated in a manner showing that no

[fol. 371] rational reapportionment plan was followed.[9] For instance, each representative from Jefferson County (12 total) and Mobile (6 total) must represent over 52,000 citizens. The Black Belt counties of Bullock, Lowndes, Autauga, Perry, Hale, Greene, Wilcox and Henry, all have representatives speaking for less than 20,000 citizens.

The Legislature itself must have recognized that the provisions of the "Crawford-Webb Act" for representation in the House were not fair or reasonable when it proposed in the "67-Senator Amendment" a reapportionment of the House of Representatives, based upon reason, with a rational regard for known and accepted standards of apportionment. The "67-Senator Amendment" proposes to apportion the seats in the House of Representatives according to the "Equal Proportions Method." (See footnote 9, *supra*.) It is an endeavor to equalize the representation between counties in the House of Representatives of a fixed size by reducing as much as possible the percentage difference between the representation of each county. This Court accepts and adopts as a part of its order that portion of the proposed "67-Senator Amendment" that relates to the reapportionment of the Alabama House of Representatives. This action will increase the representation of 6 counties as follows: Jefferson from 7 to 17; Mobile from 3 to 8; Calhoun from 2 to 3; Etowah from 2 to 3; Madison from 2 to 3; and Tusealoosa from 2 to 3. It will decrease the representation of 19 counties as follows: Dallas from 3 to 2; the following each from 2 to 1: Jackson, Chambers, Tallapoosa, Hale, Perry, Sumter, Marengo, Wilcox, Lowndes, Elmore, Butler, Pike, Lee, Russell, Barbour, Henry, Clarke and Bullock. It will result in apportioning the House seats (106) as follows: Jefferson—17 (population 634,864); Mobile—8 (population 314,301); Montgomery—4 (population 169,210); Calhoun—3 (population 95,878); Etowah—3 (population 96,980); Madison—3 (population 117,348); Tuscaloosa—3 (population 109,047); Dallas, Lauderdale, Morgan, Talladega and Walker—2 each; the remaining counties—1 each.

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[9] See "A Survey of Methods of Reapportionment in Congress," by Edward V. Huntington, Department of Mathematics, Harvard University, Senate Document No. 304, 76th Congress, Third Session.

As a permanent piece of legislation the "Crawford-Webb [fol. 372] Act" would remain in effect not subject to alteration until the next decennial federal census. See §§ 198 and 200 of the Constitution of Alabama of 1901. The Attorney General of Alabama so argues in his brief, as follows: ". . . if the constitutional amendment is defeated, the statutory bill, if constitutionally sound, will be effective and cannot be changed before the next Federal Census." Because any legislative reapportionment is not subject to change over such a long period, we called attention in our order of April 14, 1962 to the importance of constitutional standards being met "not halfheartedly but fully." As a piece of permanent legislation the provisions of the "Crawford-Webb Act" both as to the Senate and as to the House are totally unacceptable.

Those provisions are unacceptable for the further reason that the effective date of the Act is postponed until the general election to be held in November 1966, so as to await the approval or disapproval by the voters of the "67-Senator Amendment." Such postponement was unnecessary because, as we have already held, the portion of that proposed amendment providing a senator for each of the 67 counties, if approved by the voters, would itself be unconstitutional. No good reason is shown, therefore, why the plaintiffs and others like situated should be thus postponed in the exercise of their rights to the equal protection of the laws, nor why this Court should not now take some steps which may enable the Legislature elected in November 1962 to provide for a fair and proper reapportionment.

The changes resulting from the present order of this Court, unlike those which would result from a permanent Act of the Legislature, will be subject to change by the newly elected Legislature. As indicated in our order of April 14, such changes should be held to the minimum necessary to release the strangle hold on the Legislature and permit it to reapportion itself.

The duty to reapportion rests on the Legislature. This Court acts in the matter reluctantly because of the long-continued default and total inability of the Legislature to reapportion itself. Even under such circumstances, we think

that a federal court, in the light of its delicate relationship with a state legislature, should, so far as is possible, accept such parts of the Acts of the Legislature as have any merit [fol. 373] in framing the order of the Court. For the purpose of the order of the Court to release the strangle hold on the Legislature and permit it to reapportion itself, such parts of the Acts of the Legislature need not meet the standard of constitutionality required of a permanent Act of reapportionment.

We have no hesitancy in accepting as a part of this Court's order the provisions of the proposed "67-Senator Amendment" relating to the House of Representatives. The real difficulty comes as to the Senate. The proposed reapportionment of the Senate in the "Crawford-Webb Act," unacceptable as a piece of permanent legislation, may not even break the strangle hold. The only alternatives, however, which have been suggested or which appear to be subject to approval by the application of mathematical or judicial as distinguished from political standards, would result in very drastic reapportionment, and would probably place 9 counties having over half the population of the State in control of the Senate. Several senators would have to be allotted to Jefferson County and more than one to Mobile County and to Montgomery County. If the provisions of the State Constitution do not permit a single county to be divided into more than one senatorial district, such restriction would have to be held in conflict with the overriding requirement of equal protection of the laws provided by the Federal Constitution. We are not yet convinced of such conflict beyond a reasonable doubt. Despite our doubts as to their sufficiency, we therefore accept, in framing our order, that part of the "Crawford-Webb Act" providing for the reapportionment of the Senate.

It is this Court's intention that the changes relating to the House of Representatives provided in the proposed "67-Senator Amendment" and those relating to the Senate provided in the "Crawford-Webb Act" should go into effect at the general election to be held in the State in November 1962, and with the Legislature as provisionally reapportioned by this Court taking office immediately after said election. It is this Court's further intention to retain juris-

diction of this case and defer any hearing on plaintiffs' motion for a final injunction until the Legislature, as provisionally reapportioned by this order, has an opportunity to provide for a true reapportionment of both Houses of [fol. 374] the Alabama Legislature. The Court hopes that the moderate steps taken by this order may be enough to break the strangle hold. They certainly will not suffice as any permanent reapportionment. If they should prove insufficient to break the strangle hold, the Court remains under the solemn duty to relieve the plaintiffs and other citizens like situated from further denial of the equal protection of the laws. That much must be accomplished before there can be a final disposition of this case.

In order to effectuate this opinion the Court will issue an appropriate order.

Done this the 21st day of July, 1962.

Richard T. Rives, United States Circuit Judge.
Daniel H. Thomas, United States District Judge.
Frank M. Johnson, Jr., United States District Judge.

[fol. 375]

APPENDIX "A" TO OPINION

"Sec. *198*. The house of representatives shall consist of not more than one hundred and five members, unless new counties shall be created, in which event each new county shall be entitled to one representative. The members of the house of representatives shall be apportioned by the legislature among the several counties of the state, according to the number of inhabitants in them, respectively, as ascertained by the decennial census of the United States, which apportionment, when made, shall not be subject to alteration until the next session of the legislature after the next decennial census of the United States shall have been taken."

• • •

"Sec. *199*. It shall be the duty of the legislature at its first session after the taking of the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the

number of representatives and apportion them among the several counties of the state, according to the number of inhabitants in them, respectively; provided, that each county shall be entitled to at least one representative."

• • •

"Sec. *200*. It shall be the duty of the legislature at its first session after taking of the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of senators, and to divide the state into as many senatorial districts as there are senators, which districts shall be as nearly equal to each other in the number of inhabitants as may be, and each shall be entitled to one senator, and no more; and such districts, when formed, shall not be changed until the next apportioning session of the legislature, after the next decennial census of the United States shall have been taken; provided, that counties created after the next preceding apportioning session of the legislature may be attached to senatorial districts. No county shall be divided between two districts, and no district shall be made up of two or more counties not contiguous to each other."

[fol. 376]

APPENDIX "B" TO OPINION

S. 29

By Mr. Gaither

Enrolled, An Act, Proposing an amendment to the Constitution of Alabama relating to legislative apportionment. BE IT ENACTED BY THE LEGISLATURE OF ALABAMA: *Section 1.* The following amendment to the Constitution of Alabama 1901 is proposed and shall become valid as a part thereof when approved and proclaimed as prescribed by law: *Proposed Amendment 1.* The legislature of Alabama shall consist of a senator for each county and 106 members of the house of representatives, to be apportioned among the several counties as herein prescribed; provided, that in addition to the above number of repre-

sentatives each new county hereafter created shall be entitled to at least one representative. 2. At the general election in 1966, and every four years thereafter, a senator shall be elected by the qualified electors of each county in the state. 3. At the general election in 1966, and every four years thereafter, until the house of representatives is reapportioned as herein provided, the qualified electors of each county in the state shall elect such number of representatives as may be apportioned to the county as follows: The county of Jefferson shall have and elect seventeen representatives; the county of Mobile shall have and elect eight representatives; the county of Montgomery shall have and elect four representatives; the counties of Calhoun, Etowah, Madison and Tuscaloosa shall each have and elect three representatives; the counties of Dallas, Lauderdale, Morgan, Talladega and Walker shall each have and elect two representatives; and the remaining counties of the state shall each have and elect one representative. 4. On the first day, or within one week thereafter, of the regular session of the legislature in 1971, and every fifth regular session thereafter, the clerk of the house of representatives shall transmit to the secretary of state a statement showing the whole number of persons in each county under the most recent decennial census of the United States, and the number of representatives to which each county will be entitled under an apportionment of the then existing number of representatives by the method known as the method of equal proportions, no county to receive less than one representative. 5. In Section 284 of this Constitution as amended, strike out the last sentence thereof and insert the following sentence: Representation in the house of representatives of the legislature shall be based upon population. 6. Article IX (sections 197-203) of this Constitution is hereby expressly repealed. *Section 2.* An election upon the proposed amendment is ordered to be held on the date of the general election next succeeding the final adjournment of the current session of the Legislature. The election shall be held in accordance with the provisions of Sections 284 and 285 of the Constitution of Alabama, as amended, and Chapter 1, Article 18, Title 17 of the Code of Alabama 1940. *Sec-*

tion 3. Notice of the election and of the proposed amendment shall be given by proclamation of the Governor, which proclamation shall be published once a week for four successive weeks next preceding the day appointed for the election in a newspaper in each county of the State. In every county in which no newspaper is published, a copy of the notice shall be posted at each courthouse and post office.

/s/ ALBERT BOUTWELL
President and Presiding Officer of the Senate.

No. 93
RECEIVED
JUL 13 1962
TIME 2:20 P.M.
Secretary of State

/s/ VIRGIS M. ASHWORTH
Speaker of the House of Representatives.

[fol. 377]

2-29-MS

S. 29

Senate 6-20-62

I hereby certify that the within Act originated in and passed the Senate, as amended.

Senate 7-12-62

I hereby certify that the within Act originated in and passed the Senate, as amended by Conference Committee Report.

J. E. Speight,
Secretary

House of Representatives
Passed 7-10-62, as amended.

Passed 7-12-62, as amended by Conference Committee Report.

By: Mr. Gaither.

[fol. 378]

APPENDIX "C" TO OPINION

Bevill, Shumate, Gilchrist,
Hanby, Oden

H. 59

Enrolled, An Act, To fix the number of senators and representatives in the legislature, divide the state into senatorial districts, and apportion the senators and representatives among the several districts and counties.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. The senate of the legislature shall be composed of 35 senators representing 35 senatorial districts, each district to elect one senator and no more.

Section 2. The state is hereby divided into 35 senatorial districts as follows:

First, the counties of Lauderdale and Limestone; second, the counties of Lawrence and Morgan; third, the counties of Cullman and Winston; fourth, the county of Madison; fifth, the counties of Jackson and Marshall; sixth, the county of Etowah; seventh, the county of Calhoun; eighth, the county of Talladega; ninth, the counties of Randolph and Chambers; tenth, the counties of Elmore and Tallapoosa; eleventh, the county of Tuscaloosa; twelfth, the counties of Fayette and Walker; thirteenth, the county of Jefferson; fourteenth, the counties of Pickens and Lamar; fifteenth, the counties of Autauga, Chilton and Shelby; sixteenth, the counties of Monroe and Wilcox; seventeenth, the counties of Butler, Covington and Conecuh; eighteenth, the counties of Bibb and Perry; nineteenth, the counties of Clarke, Choctaw and Washington; twentieth, the counties of Marengo and Sumter; twenty-first, the counties of Baldwin and Escambia; twenty-second, the counties of Blount and St. Clair; twenty-third, the counties of Dale and Geneva; twenty-fourth, the counties of Barbour and Pike; twenty-fifth, the counties of Coffee and Crenshaw;

twenty-sixth, the counties of Bullock and Macon; twenty-seventh, the counties of Lee and Russell; twenty-eighth, the county of Montgomery; twenty-ninth, the counties of Cherokee and DeKalb; thirtieth, the counties of Dallas and Lowndes; thirty-first, the counties of Colbert, Franklin and Marion; thirty-second, the counties of Greene and Hale; thirty-third, the county of Mobile; thirty-fourth, the counties of Coosa, Clay and Cleburne; thirty-fifth, the counties of Henry and Houston.

In districts consisting of more than one county, the senators shall not be elected for more than one term consecutively from any one county in the district, but shall reside in and be elected alternately and in turn from each of the counties within such district. The first senator to be elected in such districts shall reside in the county having the largest population, except where that county had the last preceding senator. It is provided, however, that any senator in office on the effective date of this enactment shall be eligible to succeed himself as a member of the Senate, any other provision of this paragraph to the contrary notwithstanding.

Section 3. The house of representatives of the legislature shall consist of 106 members distributed among the several counties of the state as follows:

The county of Jefferson shall have and elect 12, the county of Mobile 6, and the county of Montgomery 4; the counties of Calhoun, Etowah, Madison and Tuscaloosa 3 each; the counties of Baldwin, Colbert, Cullman, Dallas, Houston, Lauderdale, Lee, Marshall, Morgan, Russell, Talladega and Walker 2 each; and the remaining counties 1 each.

Section 4. This Act shall take effect for the election of senators and representatives at the general election to be held in November 1966, and shall be effective thereafter [fol. 379] until the legislature is reapportioned according to law.

Section 5. The provisions of this Act are severable. If any part of this Act is declared invalid or unconstitu-

tional, such declaration shall not affect the part which remains.

/s/ VIRGIS M. ASHWORTH
Speaker of the House of Representatives

/s/ ALBERT BOUTWELL
President and Presiding Officer of the Senate

APPROVED July 12, 1962
TIME: 1037 AM

/s/ JOHN PATTERSON
Governor

House of Representatives
July 10, 1962

I hereby certify that the within Act originated in and was passed by the House June 26, 1962 as amended.

Oakley Melton, Jr.
Clerk

Senate	7/7/62	Amended and Passed
House	7/10/62	Concurred in Senate Amendment

No. 91
RECEIVED
Jul 12 1962
TIME 10:45 A.M.
Secretary of State

REPRESENTATION BY COUNTIES: (1901-1960)

County	1901 Total Pop.	1901 No. Rep's	1901 Pop. Per Rep.	1950 Total Pop.	1950 No. Rep's	1950 Pop. Per Rep.	1960 Total Pop.	1960 No. Rep's	1960 Pop. Per Rep.
1. Autauga	17,915	1	17,915	18,186	1	18,186	18,739	1	18,739
2. Baldwin	13,194	1	13,194	40,997	1	40,997	49,088	1	49,088
3. Barbour	35,152	2	17,576	28,892	2	14,446	24,700	2	12,350
4. Bibb	18,498	1	18,498	17,987	1	17,987	14,357	1	14,357
5. Blount	23,119	1	23,119	28,975	1	28,975	25,449	1	25,449
6. Bullock	31,954	2	15,972	16,054	2	8,027	13,462	2	6,731
7. Butler	25,760	2	12,880	29,228	2	14,614	24,560	2	12,280
8. Calhoun	34,874	2	17,437	79,539	2	39,769	95,878	2	47,939
9. Chambers	32,554	2	16,277	39,528	2	19,764	37,828	2	18,914
10. Cherokee	21,096	1	21,096	17,634	1	17,634	16,303	1	16,303
11. Chilton	16,522	1	16,522	26,922	1	26,922	25,693	1	25,693
12. Choctaw	18,136	1	18,136	19,152	1	19,152	17,870	1	17,870
13. Clarke	27,790	2	13,895	26,548	2	13,274	25,738	2	12,869
14. Clay	17,099	1	17,099	13,929	1	13,929	12,400	1	12,400
15. Cleburne	13,206	1	13,206	11,904	1	11,904	10,911	1	10,911
16. Coffee	20,972	1	20,972	30,720	1	30,720	30,583	1	30,583
17. Colbert	22,341	1	22,341	39,561	1	39,561	46,506	1	46,506
18. Conecuh	17,514	1	17,514	21,766	1	21,766	17,762	1	17,762
19. Coosa	16,144	1	16,144	11,766	1	11,766	10,726	1	10,726
20. Covington	15,346	1	15,346	40,373	1	40,373	35,631	1	35,631
21. Crenshaw	19,668	1	19,668	18,981	1	18,981	14,909	1	14,909
22. Cullman	17,849	1	17,849	49,046	1	49,046	45,572	1	45,572
23. Dale	21,189	1	21,189	20,828	1	20,828	31,066	1	31,066
24. Dallas	54,657	3	18,219	56,270	3	18,757	56,667	3	18,889
25. DeKalb	23,558	1	23,558	45,048	1	45,048	41,417	1	41,417
26. Elmore	26,098	2	13,049	31,649	2	15,824	30,524	2	15,262
27. Escambia	11,320	1	11,320	31,443	1	31,443	33,511	1	33,511
28. Etowah	27,360	2	13,680	93,892	2	46,946	96,980	2	48,490
29. Fayette	14,132	1	14,132	19,388	1	19,388	16,148	1	16,148
30. Franklin	16,511	1	16,511	25,705	1	25,705	21,988	1	21,988
31. Geneva	19,096	1	19,096	25,899	1	25,899	22,310	1	22,310
32. Greene	24,182	1	24,182	16,482	1	16,482	13,600	1	13,600
33. Hale	31,010	2	15,505	20,832	2	10,416	19,537	2	9,769
34. Henry	36,146	2	18,073	18,674	2	9,337	15,286	2	7,643

	1901			1950			1960		
	Total Pop.	No. Rep's	Pop. Per Rep.	Total Pop.	No. Rep's	Pop. Per Rep.	Total Pop.	No. Rep's	Pop. Per Rep.
35. Houston				46,522	1	46,522	50,718	1	50,718
36. Jackson	30,508	2	15,254	38,988	2	19,494	36,681	2	18,341
37. Jefferson	140,420	7	20,060	558,179	7	79,740	634,864	7	90,695
38. Lamar	16,084	1	16,084	16,441	1	16,441	14,271	1	14,271
39. Lauderdale	26,543	2	13,274	54,179	2	27,089	61,622	2	30,811
40. Lawrence	20,124	1	20,124	27,128	1	27,128	24,501	1	24,501
41. Lee	31,826	2	15,913	45,073	2	22,536	49,754	2	24,877
42. Limestone	22,387	1	22,387	35,766	1	35,766	36,513	1	36,513
43. Lowndes	35,650	2	17,825	18,018	2	9,009	15,417	2	7,709
44. Macon	23,126	1	23,126	30,561	1	30,561	26,717	1	26,717
45. Madison	43,702	2	21,851	72,503	2	36,451	117,348	2	58,674
46. Marengo	38,314	2	19,157	29,494	2	14,747	27,098	2	13,549
47. Marion	14,494	1	14,494	27,264	1	27,264	21,837	1	21,837
48. Marshall	23,289	1	23,289	45,090	1	45,090	48,018	1	48,018
49. Mobile	62,739	3	20,913	231,105	3	77,035	314,301	3	104,767
50. Monroe	23,666	1	23,666	25,732	1	25,732	22,372	1	22,372
51. Montgomery	72,044	4	18,011	138,565	4	34,741	169,210	4	42,303
52. Morgan	28,820	2	14,410	52,924	2	26,462	60,454	2	30,227
53. Perry	31,782	2	15,891	20,439	2	10,219	17,358	2	8,679
54. Pickens	24,402	1	24,402	24,349	1	24,349	21,882	1	21,882
55. Pike	29,172	2	14,586	30,608	2	15,304	25,987	2	12,994
56. Randolph	21,647	1	21,647	22,513	1	22,513	19,477	1	19,477
57. Russell	27,082	2	13,541	40,364	2	20,182	46,351	2	23,176
58. Shelby	23,684	1	23,684	30,362	1	30,362	32,132	1	32,132
59. St. Clair	19,425	1	19,425	26,687	1	26,687	25,388	1	25,388
60. Sumter	32,710	2	16,355	23,610	2	11,805	20,041	2	10,021
61. Talladega	35,772	2	17,886	63,639	2	31,819	65,495	2	32,748
62. Tallapoosa	29,674	2	14,837	35,074	2	17,537	35,007	2	17,504
63. Tuscaloosa	36,146	2	18,073	94,092	2	47,046	109,047	2	54,524
64. Walker	25,162	2	12,581	63,769	2	31,884	54,211	2	27,106

[fol. 382]

County	1901 Total Pop.	1901 No. Rep's	1901 Pop. Per Rep.	1950 Total Pop.	1950 No. Rep's	1950 Pop. Per Rep.	1960 Total Pop.	1960 No. Rep's	1960 Pop. Per Rep
65. Washington	11,134	1	11,134	15,612	1	15,612	15,372	1	15,372
66. Wilcox	35,630	2	17,815	23,476	2	11,738	18,739	2	9,369
67. Winston	9,554	1	9,554	18,250	1	18,250	14,858	1	14,858
LARGEST -			24,402			79,740			104,767
SMALLEST -			9,554			8,027			6,731
DIFFERENCE			14,848			71,713			98,036
STATE .	1,828,697	105	17,416	3,061,743	106	28,884	3,244,396	106	30,607

SENATORIAL DISTRICTS

(one Senator per district)

District	Total Population			Counties
	1900	1950	1960	
1	48,946	89,943	98,135	Lauderdale and Limestone
2	48,944	80,052	84,955	Lawrence and Morgan
3	50,522	96,271	85,879	Blount, Cullman and Winston
4	43,702	72,903	117,348	Madison
5	53,797	84,078	84,699	Jackson and Marshall
6	52,749	120,579	122,368	Etowah and St. Clair
7	34,874	79,538	95,878	Calhoun
8	35,773	63,639	65,485	Talladega
9	54,201	62,041	57,305	Chambers and Randolph
10	55,774	66,723	65,531	Elmore and Tallapoosa
11	36,147	94,092	109,047	Tuscaloosa
12	55,378	99,598	84,630	Fayette, Lamar and Walker
13	140,420	558,179	634,864	Jefferson
14	57,112	47,959	41,923	Pickens and Sumter
15	57,121	75,470	76,564	Autauga, Chilton and Shelby
16	35,651	18,018	15,417	Lowndes
17	58,621	91,377	77,953	Butler, Conecuh and Covington
18	50,281	38,426	31,715	Bibb and Perry
19	57,060	61,312	59,180	Choctaw, Clarke and Washington
20	38,315	29,494	27,098	Marengo
21	48,180	98,172	104,971	Baldwin, Escambia and Monroe
22	35,631	23,476	18,739	Wilcox
23	40,285	46,727	53,376	Dale and Geneva
24	35,152	28,892	24,700	Barbour
25	69,812	80,309	70,479	Coffee, Crenshaw and Pike
26	55,070	46,615	40,179	Bullock and Macon
27	58,909	85,437	96,105	Lee and Russell
28	72,047	138,965	169,210	Montgomery
29	44,654	62,682	57,720	Cherokee and DeKalb
30	54,657	56,270	56,967	Dallas
31	52,346	92,530	90,331	Colbert, Franklin and Marion
32	55,193	37,314	33,137	Greene and Hale
33	62,740	231,105	314,301	Mobile
34	46,449	37,599	34,037	Clay, Cleburne and Coosa
35	36,147	65,196	66,004	Henry and Houston

[fol. 383]

APPENDIA

3	50,522	96,271	85,879	Blount, Cullman and Winston
4	43,702	72,903	117,348	Madison
5	53,797	84,078	84,69	Jackson and Marshall
6	52,749	120,579	122,368	Etowah and St. Clair
7	34,874	79,539	95,878	Calhoun
8	35,773	63,639	65,485	Talladega
9	54,201	62,041	57,305	Chambers and Randolph
10	55,774	66,723	65,531	Elmore and Tallapoosa
11	36,147	94,092	109,047	Tuscaloosa
12	55,378	99,598	84,630	Fayette, Lamar and Walker
13	140,420	558,179	634,864	Jefferson
14	57,112	47,959	41,923	Pickens and Sumter
15	57,121	75,470	76,564	Autauga, Chilton and Shelby
16	35,651	18,018	15,417	Lowndes
17	58,621	91,377	77,953	Butler, Conecuh and Covington
18	50,281	38,426	31,715	Bibb and Perry
19	57,060	61,312	59,180	Choctaw, Clarke and Washington
20	38,315	29,494	27,098	Marengo
21	48,180	98,172	104,971	Baldwin, Escambia and Monroe
22	35,631	23,476	18,739	Wilcox
23	40,285	46,727	53,376	Dale and Geneva
24	35,152	28,892	24,700	Barbour
25	69,812	80,309	70,479	Coffee, Crenshaw and Pike
26	55,070	46,615	40,179	Bullock and Macon
27	58,909	85,437	96,105	Lee and Russell
28	72,047	138,965	169,210	Montgomery
29	44,654	62,682	57,720	Cherokee and DeKalb
30	54,657	56,270	56,667	Dallas
31	52,346	92,530	90,331	Colbert, Franklin and Marion
32	55,193	37,314	33,137	Greene and Hale
33	62,740	231,105	314,301	Mobile
34	46,449	37,529	34,037	Clay, Cleburne and Coosa
35	36,147[1]	65,196	66,004	Henry and Houston
35	1,828,697[2]	3,061,743	3,266,740[3]	

1. Houston added to circuit on creation of county out of Dale, Geneva and Henry in 1903.

2. True senatorial district in 1901 - 53,248

3. True senatorial district in 1961 - 93,235

SENATE DISTRICTS PROVIDED IN "CRAWFORD-WEBB ACT" SHOWING POPULATION VARIATIONS

DISTRICTS	POPULATION	VARIATION[1]	DISTRICTS	POPULATION	VARIATION[1]
(Under Represented)					
Jefferson	634,864	+ 541,529	Henry Houston	66,004	- 27,331
Mobile	314,301	+ 220,966			
Montgomery	169,210	+ 75,875	Tallapoosa Elmore	65,531	- 27,804
Madison	117,348	+ 24,013	Talladega	65,495	- 27,840
Tuscaloosa	109,047	+ 15,712	Cullman * Winston	60,430	- 32,498
Lauderdale Limestone	98,135	+ 4,800	Choctaw Clarke		
Etowah *	96,980	+ 3,645	Washington	56,180	- 34,155
Lee Russell	96,105	+ 2,770	Cherokee DeKalb	57,720	- 35,615
Calhoun	95,678	+ 2,543	Chambers Randolph	57,305	- 36,030
(Over Represented)					
Colbert Franklin Marion	90,331	- 3,004	Dale Geneva	53,376	- 39,959
			St. Clair * Blount	50,837	- 42,496
Lawrence Morgan	84,955	- 8,380	Barbour * Pike	50,687	- 42,648
Jackson Marshall	84,699	- 8,636	Marengo * Sumter	47,139	- 46,196
Baldwin * Escambia	82,599	- 10,736	Coffee * Crenshaw	45,492	- 47,843
Butler Conecuh	[illegible]	[illegible]	Wilcox *	41,111	- 52.224

[fol. 384]

Madison	117,348	+ 24,013	Talladega	65,495	- 27,840
Tuscaloosa	109,047	+ 15,712	Cullman * Winston	60,430	- 32,498
Lauderdale Limestone	98,135	+ 4,800	Choctaw Clarke Washington	56,180	- 34,155
Etowah *	96,980	+ 3,645	Cherokee DeKalb	57,720	- 35,615
Lee Russell	96,105	+ 2,770	Chambers Randolph	57,305	- 36,030
Calhoun	95,878	+ 2,543	Dale Geneva	53,376	- 39,959
(Over Represented)			St. Clair * Blount	50,837	- 42,496
Colbert Franklin Marion	90,331	- 3,004	Barbour * Pike	50,687	- 42,648
Lawrence Morgan	84,955	- 8,380	Marengo * Sumter	47,139	- 46,196
Jackson Marshall	84,699	- 8,636	Coffee * Crenshaw	45,492	- 47,843
Baldwin * Escambia	82,599	- 10,736	Wilcox * Monroe	41,111	- 52,224
Butler Conecuh Covington	77,953	- 15,282	Pickens * Lamar	36,153	- 56,182
Autauga Chilton Shelby	78,564	- 16,771	Bullock Macon	40,179	- 53,156
Lowndes * Dallas	72,084	- 21,251	Clay Cleburne Coosa	34,037	- 59,298
Fayette * Walker	70,359	- 22,976	Greene Hale	33,137	- 60,198
			Bibb Perry	31,715	- 61,620

1. Variation from Perfect District of 93,335.

* New districts created by this Act.

[fol. 384]

APPENDIX "F" TO OPINION

[fol. 385] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

[Title omitted]

MOTION FOR REHEARING AND MODIFICATION OF PROPOSED DECREE—Filed July 25, 1962

The undersigned hereby respectfully move the Court to modify its proposed decree in the above styled action insofar as said decree will provide for the provisional redistricting of the Senate of Alabama. It is moved that the decree be entered so as to require the provisional redistricting of the Senate in the manner shown in Table VII or Table VIII to the affidavit of David J. Vann which is in evidence before this Court.

As grounds for said motion, the movants assign the following grounds:

1. The Court by its opinion of July 21, 1962, decided each of the following principles which support this motion.

(a) Plaintiffs are entitled to relief.

(b) Plaintiffs are entitled to relief prior to the November 1962 elections.

(c) Plaintiffs are entitled to non-discriminatory representation in the Senate when combined with a House that is partially apportioned on the equal proportions method but with 67 of the 106 members arbitrarily assigned on the basis of one representative per county regardless of population.

[fol. 386] (d) The Senate adopted by the Court from the Webb-Crawford Act does not accord the plaintiffs equal protection of the laws or comply with the Constitution of Alabama.

(e) In order to accord the plaintiff equal protection of the laws, the Constitution of Alabama should be enforced so as to give each of the three largest counties more than one Senator in a Senate composed of 35 members.

2. The Plan adopted by the Court fails to unlock minority control of the Alabama Legislature.

(a) 49.06% of the people of Alabama live in 8 largest counties, but the people of these counties would have only 22.86% of the Senate vote, or less than ½ of the vote required to give them equal protection of the laws.

(b) 27.6% of the people of Alabama, residing in 37 counties, retain 51.4% of the Senate members, sufficient strength to control the action of the entire Legislature.

(c) In practical effect, when considered in the light of Section 2 of the Special Primary Act (H. 130),[1] [fol. 387] the Court's proposed Senate merely transfers one Senate seat from one over-represented district to another over-represented district; because nominations have already been made by the Democratic Party from the present Senate districts, and because the special primary bill enacted provides that such nominations shall stand as to any nominee who is the only nominee residing in a newly created Senate district under Court ordered provisional reapportionment, the Court's plan will result only in the transfer of one seat from the over-represented district composed of Dallas and Lowndes counties to the newly created, and also

[1] H. 130 provides in pertinent part: "If a senatorial district under the new apportionment is not composed of exactly the same territory that previously formed a senatorial district and only one resident of such new district has been nominated by a political party at a primary election in May 1962 as its candidate for state senator from a then existing district . . . such person shall be that political party's nominee as candidate for state senator from the newly created senatorial district at the general election in November 1962."

over-represented, district composed of Blount and St. Clair counties;[2] therefore the provisional Senate proposed will retain almost exactly its present composition; the apparent elimination of extremely small senate districts has been rendered nugatory by the Special Primary Act.

(d) The majority of the people residing in the 8 largest counties, because of the continued operation of the principle of allotting one representative per county without regard to population, have only 43 of the 106 members, or 40.6% of the House of Representatives.

3. The most blatant examples of invidious discrimination, by reason of which the jurisdiction of the Court attaches, have not been eliminated by the provisional Senate.

(a) The citizens of Jefferson County, who constitute 19.4% of the population of Alabama, are given only one, or merely 2.9% of the Senate members.

[fol. 388] (b) The citizens of Mobile County, who constitute 9.6% of the population of Alabama, are given only one, or merely 2.9%, of the Senate members.

(c) The citizens of Montgomery County, who constitute 5.2% of the population of Alabama, are given only one, or merely 2.9%, of the Senate members.

4. The plan adopted by the Court fails to give the citizens of the counties of Jefferson, Montgomery and Mobile equal protection of the laws in the most important process of devising a legislative remedy in the next session of the Legislature as contemplated by this Court in its opinion.

5. There is available to the Court a minimum change plan for the Senate that would eliminate all of the above mentioned examples of invidious discrimination and which would substantially comply with the Constitution of Ala-

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[2] Except for these districts each provisional district under the Webb-Crawford Plan has only one resident Democratic nominee: Dallas—Lowndes has two; Blount—St. Clair has none.

bama as interpreted by the Court to comply with equal protection of the laws.

This motion is made because the proposed decree of the Court raises questions which have not been argued to the Court, either orally or by brief. It is made because of the conviction that this Court's provisional remedy should give assurance that the reapportionment problem can be fully resolved by the Legislature of Alabama without further resort to this Court, and because of the conviction that the plan proposed by the Court with reference to the Senate will prevent this much desired result. Invidious denial of equal protection of laws should not be continued by order of this Court. The majority of the citizens of this State [fol. 389] should at least be afforded a substantially equal voice in the enactment of a permanent legislative apportionment plan in accordance with the Constitutions of Alabama and of the United States.

Respectively submitted,

David J. Vann, Robert S. Vance, C. H. Erskine Smith, Attorneys for Intervening Officers of the Jefferson County Democratic Campaign Committee.

John W. McConnell, Jr., Attorney for Intervening members of the Citizens Committee for Representative Government on Fair Basis.

Duly sworn to by David J. Vann, jurat omitted in printing.

Certificate of Service (omitted in printing).

[fol. 390] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

[Title omitted]

ORDER DENYING MOTION FOR REHEARING AND MODIFICATION—July 25, 1962

Several of the intervening plaintiffs have filed on this date a "Motion for Rehearing and Modification of Proposed Decree." This motion seeks to have this Court modify its opinion of July 21, 1962 and the decree entered thereon of July 25, 1962, to the extent that said opinion and decree relate to the reapportionment and redistricting of the Senate of Alabama.

[fol. 391] There are no new matters set out in the motion for rehearing and modification that were not presented to and thoroughly considered by this Court prior to issuing its opinion of July 21, 1962 and the decree issued thereon.

Upon consideration of the "Motion for Rehearing and Modification of Proposed Decree" and the several grounds thereof, it is, therefore, the Order, Judgment and Decree of this Court that said motion be and the same is hereby denied.

Done, this the 25th day of July, 1962.

Richard T. Rives, United States Circuit Judge,
Daniel H. Thomas, United States District Judge,
Frank M. Johnson, Jr., United States District Judge.

[fol. 392]

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

NORTHERN DIVISION

Civil Action No. 1744-N

M. O. SIMS, FRED A. BEAM, WYLIE JOHNSON, G. R. SOUTHARD, MILES S. LEE, PAUL FRIEDMAN, WILLIAM LINDSAY WILLIAMS, WILLIAM P. SHAW, JR., PRENTICE W. THOMAS, RICHARD D. TANNEHILL, PAUL M. BYRNE, DAVID R. BAKER, CHARLES MORGAN, JR., and GEORGE PEACH TAYLOR, for themselves jointly and severally, and for all others similarly situated, Plaintiffs,

R. E. FARR, MARSHALL MEADOWS, JACK HOPPING, JACK RYAN, MAX W. MORGAN, DAVID J. VANN, ROBERT S. VANCE, RICHARD P. HUMPHREY, JR., JOHN W. MCCONNELL, JR., JOSEPH N. LANGAN, WILLIAM M. WILLIAMS, JR., and GARET VAN ANTWERP, Intervening Plaintiffs,

VS.

BETTYE FRINK, Secretary of State of the State of Alabama; HARRELL HAMMONDS, Judge of Probate of Lowndes County, Alabama; JOHN A. SANKEY, Judge of Probate of Montgomery County, Alabama; J. PAUL MEEKS, Judge of Probate of Jefferson County, Alabama; JOHN GRENIER, Chairman of the Alabama State Republican Executive Committee; PERRY O. HOOPER, Secretary of the Alabama State Republican Executive Committee; ROY MAYHALL, Chairman of the Alabama State Democratic Executive Committee; H. G. RAINS, Secretary of the Alabama State Democratic Executive Committee; MACDONALD GALLION, Attorney General of the State of Alabama, Defendants.

DECREE—July 25, 1962

Pursuant to and in accordance with the opinion of this Court filed herein on July 21, 1962, and for the purpose of

effectuating that opinion, it is the Order, Judgment and Decree of this Court:

(1) That the plaintiffs, as citizens of the United States and of the State of Alabama, are denied the equal protection of the law accorded them by the Fourteenth Amendment to the Constitution of the United States by virtue of the debasement of their votes since the Legislature of the [fol. 393] State of Alabama has failed and continues to fail to reapportion itself as required by law.

(2) That the present apportionment of both Houses of the Legislature of the State of Alabama (which apportionment is pursuant to Article 9, §§ 202 and 203 of the Constitution of Alabama of 1901 and §§ 1 and 2, Title 32, Code of Alabama) constitutes "invidious discrimination" in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

(3) That Act No. 93, Senate Bill 29, commonly referred to as the "67-Senator Amendment," proposing an amendment to the Constitution of Alabama relating to legislative apportionment as passed in the 1962 Special Session of the Legislature for the State of Alabama on July 12, 1962, be and the same is hereby declared to be an unconstitutional proposal within the meaning of the equal protection provisions of the Fourteenth Amendment to the Constitution of the United States.

(4) That Act No. 91, House Bill 59, commonly referred to as the "Crawford-Webb Bill," passed in the 1962 Special Session of the Legislature and approved by the Governor of the State of Alabama on July 12, 1962, be and the same is hereby declared to be an unconstitutional Act within the meaning of the equal protection provisions of the Fourteenth Amendment to the Constitution of the United States.

(5) That Act No. 93, Senate Bill 29 (commonly referred to as the "67-Senator Amendment") and Act No. 91, House Bill 59 (commonly referred to as the "Crawford-Webb Bill"), both having been passed by the 1962 Special Session of the Legislature for the State of Alabama, are each void, invalid and ineffective to the extent that they attempt to

correct the denial of the plaintiffs' rights, said denial arising from the debasement of plaintiffs' votes in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

It is the further Order, Judgment and Decree of this Court that Bettye Frink, Secretary of State of the State of Alabama; John Grenier, Chairman of the Alabama State Republican Executive Committee; Perry O. Hooper, Secretary of the Alabama State Republican Executive Committee; Roy Mayhall, Chairman of the Alabama State Democratic Executive Committee; H. G. Rains, Secretary of the [fol. 394] Alabama State Democratic Executive Committee; MacDonald Gallion, Attorney General of the State of Alabama; James A. Rice, Judge of Probate of Autauga County, Alabama; W. R. Stuart, Judge of Probate of Baldwin County, Alabama; George Edward Little, Judge of Probate of Barbour County, Alabama; G. H. Stacy, Judge of Probate of Bibb County, Alabama; W. F. Maynor, Judge of Probate of Blount County, Alabama; Fred D. Main, Judge of Probate of Bullock County, Alabama; James T. Beeland, Judge of Probate of Butler County, Alabama; G. Clyde Brittain, Judge of Probate of Calhoun County, Alabama; O. D. Alsobrook, Judge of Probate of Chambers County, Alabama; Charles A. Formby, Judge of Probate of Cherokee County, Alabama; Jerald Clark White, Judge of Probate of Chilton County, Alabama; Richard Edwin McPhearson, Judge of Probate of Choctaw County, Alabama; W. Cecil Johnson, Judge of Probate of Clarke County, Alabama; G. W. Pruet, Judge of Probate of Clay County, Alabama; Thomas Jefferson Baber, Judge of Probate of Cleburne County, Alabama; J. Oscar English, Judge of Probate of Coffee County, Alabama; M. Gresham Hale, Judge of Probate of Colbert County, Alabama; Lloyd G. Hart, Judge of Probate of Conecuh County, Alabama; Mac Thomas, Judge of Probate of Coosa County, Alabama; Leland G. Enzor, Judge of Probate of Covington County, Alabama; John M. McSwean, Judge of Probate of Crenshaw County, Alabama; Graf Hart, Judge of Probate of Cullman County, Alabama; Kirke Adams, Judge of Probate of Dale County, Alabama; Bernard A. Reynolds, Judge of Probate of Dallas

County, Alabama; J. Frank Croley, Judge of Probate of DeKalb County, Alabama; W. M. (Willie) Cousins, Judge of Probate of Elmore County, Alabama; Reo Kirkland, Judge of Probate of Escambia County, Alabama; Wiley J. Hickman, Judge of Probate of Etowah County, Alabama; Clyde C. Cargile, Judge of Probate of Fayette County, Alabama; W. W. Weatherford, Judge of Probate of Franklin County, Alabama; R. S. Ward, Judge of Probate of Geneva County, Alabama; James Dennis Herndon, Judge of Probate of Greene County, Alabama; Robert K. Greene, Judge of Probate of Hale County, Alabama; Theodore R. Ward, Judge of Probate of Henry County, Alabama; Carl E. Sellers, Judge of Probate of Houston County, Alabama; Robert I. Gentry, Judge of Probate of Jackson County, Alabama; J. Paul Meeks, Judge of Probate of Jefferson County, Alabama; Victor C. Paul, Judge of Probate of Lamar County, Alabama; Estes R. Flynt, Judge of [fol. 395] Probate of Lauderdale County, Alabama; Isaac Johnson, Jr., Judge of Probate of Lawrence County, Alabama; Ira H. Weissinger, Judge of Probate of Lee County, Alabama; Mason Clifton Freeman, Judge of Probate of Limestone County, Alabama; Harrell Hammonds, Judge of Probate of Lowndes County, Alabama; William Varner, Judge of Probate of Macon County, Alabama; Ashford Todd, Judge of Probate of Madison County, Alabama; R. J. Westbrook, Judge of Probate of Marengo County, Alabama; Frank Pearce, Judge of Probate of Marion County, Alabama; Jesse Epps Corbin, Judge of Probate of Marshall County, Alabama; Vernol R. Jansen, Judge of Probate of Mobile County, Alabama; Eugene T. Millsap, Judge of Probate of Monroe County, Alabama; John A. Sankey, Judge of Probate of Montgomery County, Alabama; T. C. Almon, Judge of Probate of Morgan County, Alabama; David S. Lee, Judge of Probate of Perry County, Alabama; R. B. Harris, Judge of Probate of Pickens County, Alabama; Ben Reeves, Judge of Probate of Pike County, Alabama; Stell Benefield, Judge of Probate of Randolph County, Alabama; J. Shannon Burch, Judge of Probate of Russell County, Alabama; Hoyt B. Hamilton, Judge of Probate of Saint Clair County, Alabama; Conrad M. Fowler, Judge of Pro-

bate of Shelby County, Alabama; Wilbur Elisha Dearman, Judge of Probate of Sumter County, Alabama; William F. Killough, Judge of Probate of Talladega County, Alabama; Charles C. Adams, Judge of Probate of Tallapoosa County, Alabama; David M. Cochrane, Judge of Probate of Tuscaloosa County, Alabama; Nelson U. Allen, Judge of Probate of Walker County, Alabama; John G. Kimbrough, Judge of Probate of Washington County, Alabama; William Dannelly, Judge of Probate of Wilcox County, Alabama; and Loyd H. McDonald, Judge of Probate of Winston County, Alabama, be and each is enjoined and restrained from furnishing forms for nominations, from receiving nominations, petitions and papers, from certifying nominations, nominees, or elections, and from any other act necessary to the holding of elections, including primary elections, for members of the Alabama Legislature in districts as established by Article 9, §§ 202 and 203 of the Constitution of Alabama of 1901, and §§ 1 and 2, Title 32, Code of Alabama, except in accordance with the order and opinion of this Court filed herein on July 21, 1962 and except and in accordance with the apportionment of the Alabama Legislature as herein-[fol. 396] after specifically set out.

It is the further Order, Judgment and Decree of this Court:

(1) That the membership of the House of Representatives for the State of Alabama, effective on the day after the general election to be held in November, 1962, be and the same is hereby apportioned as follows:

The County of Jefferson shall have and elect seventeen representatives; the County of Mobile shall have and elect eight representatives; the County of Montgomery shall have and elect four representatives; the Counties of Calhoun, Etowah, Madison and Tuscaloosa shall each have and elect three representatives; the Counties of Dallas, Lauderdale, Morgan, Talladega and Walker shall each have and elect two representatives; and the remaining counties of the State of Alabama shall each have and elect one representative.

(2) That the Senate of the State of Alabama be and the same is hereby apportioned as follows:

First District: The Counties of Lauderdale and Limestone.

Second District: The Counties of Lawrence and Morgan.

Third District: The Counties of Cullman and Winston.

Fourth District: The County of Madison.

Fifth District: The Counties of Jackson and Marshall.

Sixth District: The County of Etowah.

Seventh District: The County of Calhoun.

Eighth District: The County of Talladega.

Ninth District: The Counties of Randolph and Chambers.

Tenth District: The Counties of Elmore and Tallapoosa.

Eleventh District: The County of Tuscaloosa.

Twelfth District: The Counties of Fayette and Walker.

Thirteenth District: The County of Jefferson.

Fourteenth District: The Counties of Pickens and Lamar.

Fifteenth District: The Counties of Autauga, Chilton and Shelby.

Sixteenth District: The Counties of Monroe and Wilcox.

Seventeenth District: The Counties of Butler, Covington and Conecuh.

[fol. 397] *Eighteenth District*: The Counties of Bibb and Perry.

Nineteenth District: The Counties of Clarke, Choctaw and Washington.

Twentieth District: The Counties of Marengo and Sumter.

Twenty-first District: The Counties of Baldwin and Escambia.

Twenty-second District: The Counties of Blount and Saint Clair.

Twenty-third District: The Counties of Dale and Geneva.

Twenty-fourth District: The Counties of Barbour and Pike.

Twenty-fifth District: The Counties of Coffee and Crenshaw.

Twenty-sixth District: The Counties of Bullock and Macon.

Twenty-seventh District: The Counties of Lee and Russell.

Twenty-eighth District: The County of Montgomery.

Twenty-ninth District: The Counties of Cherokee and DeKalb.

Thirtieth District: The Counties of Dallas and Lowndes.

Thirty-first District: The Counties of Colbert, Franklin and Marion.

Thirty-second District: The Counties of Greene and Hale.

Thirty-third District: The County of Mobile.

Thirty-fourth District: The Counties of Coosa, Clay and Cleburne.

Thirty-fifth District: The Counties of Henry and Houston.

(3) That the apportionment of the Alabama Legislature, both the House of Representatives and the Senate, as herein ordered and directed, shall be effective upon the filing of this decree, with the terms of office of the new

legislative seats herein created to commence on the day after the general election to be held in November, 1962.

(4) That the officials heretofore elected to either the House of Representatives or the Senate for the State of Alabama from counties and/or senatorial districts that are herein altered, changed or eliminated, shall continue to serve as such elected officials until the expiration of the terms of office of said senators and representatives on the day after the general election to be held in November, 1962.

(5) That the seats—both in the House of Representatives [fol. 398] and the Senate for the State of Alabama—that are herein ordered to be eliminated, not be refilled after the present terms of office, of said presently elected officials to said offices, expire in November, 1962.

It is the further Order, Judgment and Decree of this Court that Bettye Frink, Secretary of State of the State of Alabama; John Grenier, Chairman of the Alabama State Republican Executive Committee; Perry O. Hooper, Secretary of the Alabama State Republican Executive Committee; Roy Mayhall, Chairman of the Alabama State Democratic Executive Committee; H. G. Rains, Secretary of the Alabama State Democratic Executive Committee (in those counties and districts where said political parties desire to select and nominate candidates); MacDonald Gallion, Attorney General of the State of Alabama; and each of the probate judges in the State of Alabama as hereinafter named, their agents, employees, and successors in office, be and each is hereby, separately and severally, Directed and Enjoined to select and nominate—either by primary as authorized by House Bill 130, signed into law on July 23, 1962, or by political-party committee action that may be authorized by the laws of the State of Alabama—and provide for the election in the general election to be held in November, 1962, of the members of the House of Representatives and members of the Senate for the State of Alabama as follows and not otherwise:

(1) *Autauga County*: Judge of Probate, James A. Rice, Prattville; one House member and, with Shelby

and Chilton Counties, one Senate member for the Fifteenth Senatorial District.

(2) *Baldwin County*: Judge of Probate, W. R. Stuart, Bay Minette; one House member and, with Escambia County, one Senate member for the Twenty-first Senatorial District.

(3) *Barbour County*: Judge of Probate, George Edward Little, Clayton; one House member and, with Pike County, one Senate member for the Twenty-fourth Senatorial District.

(4) *Bibb County*: Judge of Probate, G. H. Stacy, Centerville; one House member and, with Perry County, one Senate member for the Eighteenth Senatorial District.

(5) *Blount County*: Judge of Probate, W. F. Maynor, Oneonta; one House member and, with Saint Clair County, one Senate member for the Twenty-second Senatorial District.

(6) *Bullock County*: Judge of Probate, Fred D. Main, Union Springs; one House member and, with Macon County, one Senate member for the Twenty-sixth Senatorial District.

[fol. 399] (7) *Butler County*: Judge of Probate, James T. Beeland, Greenville; one House member and, with Conecuh and Covington Counties, one Senate member for the Seventeenth Senatorial District.

(8) *Calhoun County*: Judge of Probate, G. Clyde Brittain, Anniston; three House members and one Senate member for the Seventh Senatorial District.

(9) *Chambers County*: Judge of Probate, O. D. Alsobrook, LaFayette; one House member and, with Randolph County, one Senate member for the Ninth Senatorial District.

(10) *Cherokee County*: Judge of Probate, Charles A. Formby, Centre; one House member and, with

DeKalb County, one Senate member for the Twenty-ninth Senatorial District.

(11) *Chilton County*: Judge of Probate, Jerald Clark White, Clanton; one House member and, with Autauga and Shelby Counties, one Senate member for the Fifteenth Senatorial District.

(12) *Choctaw County*: Judge of Probate, Richard Edwin McPhearson, Butler; one House member and, with Clarke and Washington Counties, one Senate member for the Nineteenth Senatorial District.

(13) *Clarke County*: Judge of Probate, W. Cecil Johnson, Grove Hill; one House member and, with Choctaw and Washington Counties, one Senate member for the Nineteenth Senatorial District.

(14) *Clay County*: Judge of Probate, G. W. Pruet, Ashland; one House member and, with Cleburne and Coosa Counties, one Senate member for the Thirty-fourth Senatorial District.

(15) *Cleburne County*: Judge of Probate, Thomas Jefferson Baber, Heflin; one House member and, with Clay and Coosa Counties, one Senate member for the Thirty-fourth Senatorial District.

(16) *Coffee County*: Judge of Probate, J. Oscar English, Elba; one House member and, with Crenshaw County, one Senate member for the Twenty-fifth Senatorial District.

(17) *Colbert County*: Judge of Probate, M. Gresham Hale, Tuscumbia; one House member and, with Franklin and Marion Counties, one Senate member for the Thirty-first Senatorial District.

(18) *Conecuh County*: Judge of Probate, Loyd G. Hart, Evergreen; one House member and, with Butler and Covington Counties, one Senate member for the Seventeenth Senatorial District.

(19) *Coosa County*: Judge of Probate, Mac Thomas, Rockford; one House member and, with Clay

and Cleburn Counties, one Senate member for the Thirty-fourth Senatorial District.

[fol. 400] (20) *Covington County*: Judge of Probate, Leland G. Enzor, Andalusia; one House member and, with Butler and Conecuh Counties, one Senate member for the Seventeenth Senatorial District.

(21) *Crenshaw County*: Judge of Probate, John M. McSwean, Luverne; one House member and, with Coffee County, one Senate member for the Twenty-fifth Senatorial District.

(22) *Cullman County*: Judge of Probate, Graf Hart, Cullman; one House member and, with Winston County, one Senate member for the Third Senatorial District.

(23) *Dale County*: Judge of Probate, Kirke Adams, Ozark; one House member and, with Geneva County, one Senate member for the Twenty-third Senatorial District.

(24) *Dallas County*: Judge of Probate, Bernard A. Reynolds, Selma; two House members and, with Lowndes County, one Senate member for the Thirtieth Senatorial District.

(25) *DeKalb County*: Judge of Probate, J. Frank Croley, Fort Payne; one House member and, with Cherokee County, one Senate member for the Twenty-ninth Senatorial District.

(26) *Elmore County*: Judge of Probate, W. M. (Willie) Cousins, Wetumpka; one House member and, with Tallapoosa County, one Senate member for the Tenth Senatorial District.

(27) *Escambia County*: Judge of Probate, Reo Kirkland, Brewton; one House member and, with Baldwin County, one Senate member for the Twenty-first Senatorial District.

(28) *Etowah County*: Judge of Probate, Wiley J. Hickman, Gadsden; three House members and one Senate member for the Sixth Senatorial District.

(29) *Fayette County*: Judge of Probate, Clyde C. Cargile, Fayette; one House member and, with Walker County, one Senate member for the Twelfth Senatorial District.

(30) *Franklin County*: Judge of Probate, W. W. Weatherford, Russellville; one House member and, with Colbert and Marion Counties, one Senate member for the Thirty-first Senatorial District.

(31) *Geneva County*: Judge of Probate, R. S. Ward, Geneva; one House member and, with Dale County, one Senate member for the Twenty-third Senatorial District.

(32) *Greene County*: Judge of Probate, James Dennis Herndon, Eutaw; one House member, with Hale County, one Senate member for the Thirty-second Senatorial District.

(33) *Hale County*: Judge of Probate, Robert K. Greene, Greensboro; one House member and, with Greene County, one Senate member for the Thirty-second Senatorial District.

[fol. 401] (34) *Henry County*: Judge of Probate, Theodore R. Ward, Abbeville; one House member and, with Houston County, one Senate member for the Thirty-fifth Senatorial District.

(35) *Houston County*: Judge of Probate, Carl E. Sellers, Dothan; one House member and, with Henry County, one Senate member for the Thirty-fifth Senatorial District.

(36) *Jackson County*: Judge of Probate, Robert I. Gentry, Scottsboro; one House member and, with Marshall County, one Senate member for the Fifth Senatorial District.

(37) *Jefferson County*: Judge of Probate, J. Paul Meeks, Birmingham; seventeen House members and one Senate member for the Thirteenth Senatorial District.

(38) *Lamar County*: Judge of Probate, Victor C. Paul, Vernon; one House member and, with Pickens County, one Senate member for the Fourteenth Senatorial District.

(39) *Lauderdale County*: Judge of Probate, Estes R. Flynt, Florence; two House members and, with Limestone County, one Senate member for the First Senatorial District.

(40) *Lawrence County*: Judge of Probate, Isaac Johnson, Jr., Moulton; one House member and, with Morgan County, one Senate member for the Second Senatorial District.

(41) *Lee County*: Judge of Probate, Ira H. Weissinger, Opelika; one House member and, with Russell County, one Senate member for the Twenty-seventh Senatorial District.

(42) *Limestone County*: Judge of Probate, Mason Clifton Freeman, Athens; one House member and, with Lauderdale County, one Senate member for the First Senatorial District.

(43) *Lowndes County*: Judge of Probate, Harrell Hammonds, Hayneville; one House member and, with Dallas County, one Senate member for the Thirtieth Senatorial District.

(44) *Macon County*: Judge of Probate, William Varner, Tuskegee; one House member and, with Bullock County, one Senate member for the Twenty-sixth Senatorial District.

(45) *Madison County*: Judge of Probate, Ashford Todd, Huntsville; three House members and one Senate member for the Fourth Senatorial District.

(46) *Marengo County*: Judge of Probate, R. J. Westbrook, Linden; one House member and, with Sumter County, one Senate member for the Twentieth Senatorial District.

(47) *Marion County*: Judge of Probate, Frank Pearce, Hamilton; one House member and, with Colbert

and Franklin Counties, one Senate member for the Thirty-first Senatorial District.

[fol. 402] (48) *Marshall County*: Judge of Probate, Jesse Epps Corbin, Guntersville; one House member and, with Jackson County, one Senate member for the Fifth Senatorial District.

(49) *Mobile County*: Judge of Probate, Vernol R. Jansen, Mobile; eight House members and one Senate member for the Thirty-third Senatorial District.

(50) *Monroe County*: Judge of Probate, Eugene T. Millsap, Monroeville; one House member and, with Wilcox County, one Senate member for the Sixteenth Senatorial District.

(51) *Montgomery County*: Judge of Probate, John A. Sankey, Montgomery; four House members and one Senate member for the Twenty-eighth Senatorial District.

(52) *Morgan County*: Judge of Probate, T. C. Almon, Decatur; two House members and, with Lawrence County, one Senate member for the Second Senatorial District.

(53) *Perry County*: Judge of Probate, David S. Lee, Marion; one House member and, with Bibb County, one Senate member for the Eighteenth Senatorial District.

(54) *Pickens County*: Judge of Probate, R. B. Harris, Carrollton; one House member and, with Lamar County, one Senate member for the Fourteenth Senatorial District.

(55) *Pike County*: Judge of Probate, Ben Reeves, Troy; one House member and, with Barbour County, one Senate member for the Twenty-fourth Senatorial District.

(56) *Randolph County*: Judge of Probate, Stell Benefield, Wedowee; one House member and, with Chambers County, one Senate member for the Ninth Senatorial District.

(57) *Russell County*: Judge of Probate, J. Shannon Burch, Phenix City; one House member and, with Lee County, one Senate member for the Twenty-seventh Senatorial District.

(58) *Saint Clair County*: Judge of Probate, Hoyt B. Hamilton, Ashville; one House member and, with Blount County, one Senate member for the Twenty-second Senatorial District.

(59) *Shelby County*: Judge of Probate, Conrad M. Fowler, Columbiana; one House member and, with Autauga and Chilton Counties, one Senate member for the Fifteenth Senatorial District.

(60) *Sumter County*: Judge of Probate, Wilbur Elisha Dearman, Livingston; one House member and, with Marengo County, one Senate member for the Twentieth Senatorial District.

(61) *Talladega County*: Judge of Probate, William F. Killough, Talladega; two House members and one Senate member for the Eighth Senatorial District.

(62) *Tallapoosa County*: Judge of Probate, Charles C. Adams, Dadeville; one House member and, with Elmore County, one Senate member for the Tenth Senatorial District.

[fol. 403] (63) *Tuscaloosa County*: Judge of Probate, David M. Cochrane, Tuscaloosa; three House members and one Senate member for the Eleventh Senatorial District.

(64) *Walker County*: Judge of Probate, Nelson U. Allen, Jasper; two House members and, with Fayette County, one Senate member for the Twelfth Senatorial District.

(65) *Washington County*: Judge of Probate, John G. Kimbrough, Chatom; one House member and, with Choctaw and Clarke Counties, one Senate member for the Nineteenth Senatorial District.

(66) *Wilcox County*: Judge of Probate, William Dannelly, Camden; one House member and, with Monroe County, one Senate member for the Sixteenth Senatorial District.

(67) *Winston County*: Judge of Probate, Loyd H. McDonald, Double Springs; one House member and, with Cullman County, one Senate member for the Third Senatorial District.

It is the further Order, Judgment and Decree of this Court that the apportionment of the Alabama Legislature as herein ordered remain in effect without change, except by order of this Court, until the Legislature of the State of Alabama reapportions itself in accordance with the equal protection provisions of the Fourteenth Amendment to the Constitution of the United States, which nothing in this decree shall prevent it from doing; such action of the Legislature, when taken, being subject to review by this Court.

It is the further Order, Judgment and Decree of this Court that Bettye Frink, Secretary of State of the State of Alabama; John Grenier, Chairman of the Alabama State Republican Executive Committee; Perry O. Hooper, Secretary of the Alabama State Republican Executive Committee; Roy Mayhall, Chairman of the Alabama State Democratic Executive Committee; H. G. Rains, Secretary of the Alabama State Democratic Executive Committee; MacDonald Gallion, Attorney General of the State of Alabama; James A. Rice, Judge of Probate of Autauga County, Alabama; W. R. Stuart, Judge of Probate of Baldwin County, Alabama; George Edward Little, Judge of Probate of Barbour County, Alabama; G. H. Stacy, Judge of Probate of Bibb County, Alabama; W. F. Maynor, Judge of Probate of Blount County, Alabama; Fred D. Main, Judge of Probate of Bullock County, Alabama; James T. Beeland, Judge of Probate of Butler County, Alabama; G. Clyde Brittain, Judge of Probate of Calhoun [fol. 404] County, Alabama; O. D. Alsobrook, Judge of Probate of Chambers County, Alabama; Charles A. Formby, Judge of Probate of Cherokee County, Alabama;

Jerald Clark White, Judge of Probate of Chilton County, Alabama; Richard Edwin McPhearson, Judge of Probate of Choctaw County, Alabama; W. Cecil Johnson, Judge of Probate of Clarke County, Alabama; G. W. Pruet, Judge of Probate of Clay County, Alabama; Thomas Jefferson Baber, Judge of Probate of Cleburne County, Alabama; J. Oscar English, Judge of Probate of Coffee County, Alabama; M. Gresham Hale, Judge of Probate of Calhoun County, Alabama; Loyd G. Hart, Judge of Probate of Conecuh County, Alabama; Mac Thomas, Judge of Probate of Coosa County, Alabama; Leland G. Enzor, Judge of Probate of Covington County, Alabama; John M. McSwean, Judge of Probate of Crenshaw County, Alabama; Graf Hart, Judge of Probate of Cullman County, Alabama; Kirke Adams, Judge of Probate of Dale County, Alabama; Bernard A. Reynolds, Judge of Probate of Dallas County, Alabama; J. Frank Croley, Judge of Probate of DeKalb County, Alabama; W. M. (Willie) Cousins, Judge of Probate of Elmore County, Alabama; Reo Kirkland, Judge of Probate of Escambia County, Alabama; Wiley J. Hickman, Judge of Probate of Etowah County, Alabama; Clyde C. Cargile, Judge of Probate of Fayette County, Alabama; W. W. Weatherford, Judge of Probate of Franklin County, Alabama; R. S. Ward, Judge of Probate of Geneva County, Alabama; James Dennis Herndon, Judge of Probate of Greene County, Alabama; Robert K. Greene, Judge of Probate of Hale County, Alabama; Theodore R. Ward, Judge of Probate of Henry County, Alabama; Carl E. Sellers, Judge of Probate of Houston County, Alabama; Robert I. Gentry, Judge of Probate of Jackson County, Alabama; J. Paul Meeks, Judge of Probate of Jefferson County, Alabama; Victor C. Paul, Judge of Probate of Lamar County, Alabama; Estes R. Flynt, Judge of Probate of Lauderdale County, Alabama; Isaac Johnson, Jr., Judge of Probate of Lawrence County, Alabama; Ira H. Weissinger, Judge of Probate of Lee County, Alabama; Mason Clifton Freeman, Judge of Probate of Limestone County, Alabama; Harrell Hammonds, Judge of Probate of Lowndes County, Alabama; William Varner, Judge of Probate of Macon County, Alabama; Ashford Todd, Judge of Probate of Madison County,

Alabama; R. J. Westbrook, Judge of Probate of Marengo [fol. 405] County, Alabama; Frank Pearce, Judge of Probate of Marion County, Alabama; Jesse Epps Corbin, Judge of Probate of Marshall County, Alabama; Vernol R. Jansen, Judge of Probate of Mobile County, Alabama; Eugene T. Millsap, Judge of Probate of Monroe County, Alabama; John A. Sankey, Judge of Probate of Montgomery County, Alabama; T. C. Almon, Judge of Probate of Morgan County, Alabama; David S. Lee, Judge of Probate of Perry County, Alabama; R. B. Harris, Judge of Probate of Pickens County, Alabama; Ben Reeves, Judge of Probate of Pike County, Alabama; Stell Benefield, Judge of Probate of Randolph County, Alabama; J. Shannon Burch, Judge of Probate of Russell County, Alabama; Hoyt B. Hamilton, Judge of Probate of Saint Clair County, Alabama; Conrad M. Fowler, Judge of Probate of Shelby County, Alabama; Wilbur Elisha Dearman, Judge of Probate of Sumter County, Alabama; William F. Killough, Judge of Probate of Talladega County, Alabama; Charles C. Adams, Judge of Probate of Tallapoosa County, Alabama; David M. Cochrane, Judge of Probate of Tuscaloosa County, Alabama; Nelson U. Allen, Judge of Probate of Walker County, Alabama; John G. Kimbrough, Judge of Probate of Washington County, Alabama; William Dannelly, Judge of Probate of Wilcox County, Alabama; and Loyd H. McDonald, Judge of Probate of Winston County, Alabama, take the necessary and appropriate action within the time prescribed by the laws of the State of Alabama to put into effect the apportionment of the Alabama Legislature as herein ordered. Said officials and each is separately and severally enjoined and restrained from taking any action that will hinder or obstruct, or tend to hinder or obstruct the effectuation of this Court's action in apportioning the Legislature of the State of Alabama as herein set out.

It is the further Order, Judgment and Decree of this Court that jurisdiction of this cause be and the same is hereby retained for the purpose of issuing any and all additional orders that may become necessary or appropriate in the judgment of this Court.

It is further Ordered that the United States Marshal for this district serve personally, or cause to be served personally, a copy of the opinion of this Court filed herein on July 21, 1962, and a copy of this order and decree, on each of the following:

[fol. 406] Bettye Frink, Secretary of State of the State of Alabama; John Grenier, Chairman of the Alabama State Republican Executive Committee; Perry O. Hooper, Secretary of the Alabama State Republican Executive Committee; Roy Mayhall, Chairman of the Alabama State Democratic Executive Committee; H. G. Rains, Secretary of the Alabama State Democratic Executive Committee; and MacDonald Gallion, Attorney General of the State of Alabama.

It is further Ordered that the United States Marshal for this district serve or cause to be served by certified mail a copy of the opinion of this Court entered herein on July 21, 1962, and a copy of this order and decree on the judge of probate for each county in the State of Alabama.

The costs incurred in this proceeding are hereby Ordered to be and they are taxed against the defendants, for which execution may issue.

Done, this the 25th day of July, 1962.

Richard T. Rives, United States Circuit Judge; Daniel H. Thomas, United States District Judge; Frank M. Johnson, Jr., United States District Judge.

[fol. 407]

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

NORTHERN DIVISION

Civil Action No. 1744-N

M. O. SIMS, FRED A. BEAM, WYLIE JOHNSON, G. R. SOUTHARD, MILES S. LEE, PAUL FRIEDMAN, WILLIAM LINDSAY WILLIAMS, WILLIAM P. SHAW, JR., PRENTICE W. THOMAS, RICHARD D. TANNEHILL, PAUL M. BYRNE, DAVID R. BAKER, CHARLES MORGAN, JR., and GEORGE PEACH TAYLOR, for themselves jointly and severally, and for all others similarly situated, Plaintiffs,

R. E. FARR, MARSHALL MEADOWS, JACK HOPPING, JACK RYAN, MAX W. MORGAN, DAVID J. VANN, ROBERT S. VANCE, RICHARD P. HUMPHREY, JR., JOSEPH W. MCCONNELL, JR., JOSEPH N. LANGAN, WILLIAM M. WILLIAMS, JR., and GARET VAN ANTWERP, Intervening Plaintiffs,

VS.

BETTYE FRINK, Secretary of State of the State of Alabama; HARRELL HAMMONDS, Judge of Probate of Lowndes County, Alabama; JOHN A. SANKEY, Judge of Probate of Montgomery County, Alabama; J. PAUL MEEKS, Judge of Probate of Jefferson County, Alabama; JOHN GRENIER, Chairman of the Alabama State Republican Executive Committee; PERRY O. HOOPER, Secretary of the Alabama State Republican Executive Committee; ROY MAYHALL, Chairman of the Alabama State Democratic Executive Committee; H. G. RAINS, Secretary of the Alabama State Democratic Executive Committee; MACDONALD GALLION, Attorney General of the State of Alabama, Defendants.

WRIT OF INJUNCTION—July 25, 1962

To:

Bettye Frink, Secretary of State of the State of Alabama,

John Grenier, Chairman of the Alabama State Republican Executive Committee,

Perry O. Hooper, Secretary of the Alabama State Republican Executive Committee,

Roy Mayhall, Chairman of the Alabama State Democratic Executive Committee,

H. G. Rains, Secretary of the Alabama State Democratic Executive Committee,

MacDonald Gallion, Attorney General of the State of Alabama,

James A. Rice, Judge of Probate of Autauga County, Alabama,

W. R. Stuart, Judge of Probate of Baldwin County, Alabama,

George Edward Little, Judge of Probate of Barbour County, Alabama,

G. H. Stacy, Judge of Probate of Bibb County, Alabama,

W. F. Maynor, Judge of Probate of Blount County, Alabama,

Fred D. Main, Judge of Probate of Bullock County, Alabama,

[fol. 408] James T. Beeland, Judge of Probate of Butler County, Alabama,

G. Clyde Brittain, Judge of Probate of Calhoun County, Alabama,

O. D. Alsobrook, Judge of Probate of Chambers County, Alabama,

Charles A. Formby, Judge of Probate of Cherokee County, Alabama,

Jerald Clark White, Judge of Probate of Chilton County, Alabama,

Richard Edwin McPhearson, Judge of Probate of Choctaw County, Alabama,

W. Cecil Johnson, Judge of Probate of Clarke County, Alabama,

G. W. Pruet, Judge of Probate of Clay County, Alabama,

Thomas Jefferson Baber, Judge of Probate of Cleburne County, Alabama,

J. Oscar English, Judge of Probate of Coffee County, Alabama,

M. Gresham Hale, Judge of Probate of Colbert County, Alabama,

Loyd G. Hart, Judge of Probate of Conecuh County, Alabama,

Mac Thomas, Judge of Probate of Coosa County, Alabama,

Leland G. Enzor, Judge of Probate of Covington County, Alabama,

John M. McSwean, Judge of Probate of Crenshaw County, Alabama,

Graf Hart, Judge of Probate of Cullman County, Alabama,

Kirke Adams, Judge of Probate of Dale County, Alabama,

Bernard A. Reynolds, Judge of Probate of Dallas County, Alabama,

J. Frank Croley, Judge of Probate of DeKalb County, Alabama,

W. M. (Willie) Cousins, Judge of Probate of Elmore County, Alabama,

Reo Kirkland, Judge of Probate of Escambia County, Alabama,

Wiley J. Hickman, Judge of Probate of Etowah County, Alabama,

Clyde C. Cargile, Judge of Probate of Fayette County, Alabama,

W. W. Weatherford, Judge of Probate of Franklin County, Alabama,

R. S. Ward, Judge of Probate of Geneva County, Alabama,

James Dennis Herndon, Judge of Probate of Greene County, Alabama,

Robert K. Greene, Judge of Probate of Hale County, Alabama,

Theodore R. Ward, Judge of Probate of Henry County, Alabama,

Carl E. Sellers, Judge of Probate of Houston County, Alabama,

Robert I. Gentry, Judge of Probate of Jackson County, Alabama,

J. Paul Meeks, Judge of Probate of Jefferson County, Alabama,

Victor C. Paul, Judge of Probate of Lamar County, Alabama,

Estes R. Flynt, Judge of Probate of Lauderdale County, Alabama,

Isaac Johnson, Jr., Judge of Probate of Lawrence County, Alabama,

Ira H. Weissinger, Judge of Probate of Lee County, Alabama,

Mason Clifton Freeman, Judge of Probate of Limestone County, Alabama,

Harrell Hammonds, Judge of Probate of Lowndes County, Alabama,

William Varner, Judge of Probate of Macon County, Alabama,

Ashford Todd, Judge of Probate of Madison County, Alabama,

R. J. Westbrook, Judge of Probate of Marengo County, Alabama,

Frank Pearce, Judge of Probate of Marion County, Alabama,

Jesse Epps Corbin, Judge of Probate of Marshall County, Alabama,

Vernol R. Jansen, Judge of Probate of Mobile County, Alabama,

Eugene T. Millsap, Judge of Probate of Monroe County, Alabama,

John A. Sankey, Judge of Probate of Montgomery County, Alabama,

T. C. Almon, Judge of Probate of Morgan County, Alabama,

David S. Lee, Judge of Probate of Perry County, Alabama,

R. B. Harris, Judge of Probate of Pickens County, Alabama,

Ben Reeves, Judge of Probate of Pike County, Alabama,

Stell Benefield, Judge of Probate of Randolph County, Alabama,

J. Shannon Burch, Judge of Probate of Russell County, Alabama,

Hoyt B. Hamilton, Judge of Probate of Saint Clair County, Alabama,

Conrad M. Fowler, Judge of Probate of Shelby County, Alabama,

Wilbur Elisha Dearman, Judge of Probate of Sumter County, Alabama,

William F. Killough, Judge of Probate of Talladega County, Alabama,

Charles C. Adams, Judge of Probate of Tallapoosa County, Alabama,

David M. Cochrane, Judge of Probate of Tuscaloosa County, Alabama,

Nelson U. Allen, Judge of Probate of Walker County, Alabama,

John G. Kimbrough, Judge of Probate of Washington County, Alabama,

William Dannelly, Judge of Probate of Wilcox County, Alabama, and

Loyd H. McDonald, Judge of Probate of Winston County, Alabama,

Take Notice that you and each of you, your successors in office, agents, servants, employees and persons acting on [fol. 409] your behalf, be and you are hereby Ordered and Enjoined as more particularly set out in the opinion of this Court made and filed herein on July 21, 1962, and in the order and decree of this Court made and entered herein on this date.

Done, this the 25th day of July, 1962.

R. C. Dobson, Clerk of the District Court of the United States for the Middle District of Alabama.

[fol. 410] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

NORTHERN DIVISION

[Title omitted]

NOTICE OF APPEAL OF B. A. REYNOLDS, ET AL. TO THE SUPREME COURT OF THE UNITED STATES—
Filed August 17, 1962

I. Notice is hereby given that B. A. Reynolds, Judge of Probate of Dallas County, Alabama, and Frank Pearce, Judge of Probate of Marion County, Alabama, two of the Probate Judges who as a class are defendants in the above entitled cause and against whom a decree was rendered herein, hereby appeal to the Supreme Court of the United States from the final judgment dated July 25, 1962, and [fol. 411] entered in this action on July 25, 1962, adjudging and decreeing certain statutes of the state of Alabama, relating to the reapportionment of the Legislature of Ala-

bama to be unconstitutional and void, and reapportioning the Legislature of Alabama by Judicial Decree, and in ordering and injoining these defendants and the other defendants from taking any action that would hinder or obstruct the Court's decree in apportioning the Legislature.

This appeal is taken pursuant to 28 United States Code, Section 1253.

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. Complaint with all amendments and all exhibits thereto.

2. All motions, answers, and other pleadings which have been filed, including this notice of appeal.

3. The transcript of the entire proceedings and evidence, both oral and written; at the trial of this cause.

4. All orders, opinions, and judgments of the three-judge district court including exhibits thereto.

III. The following questions are presented by this appeal:

(1) Does the three-judge district court have jurisdiction of this cause?

(2) Ought the three-judge district court to have exercised jurisdiction in this cause?

(3) Were the plaintiffs in this cause denied the equal protection of the law accorded them by the Fourteenth Amendment to the Constitution of the United States by the failure of the Legislature to reapportion itself on a strictly population basis?

(4) Does the present apportionment of both Houses of the Legislature of the State of Alabama (which apportionment is pursuant to Article 9, §§202 and 203 of the Constitu- [fol. 412] tion of Alabama of 1901 and §§1 and 2, Title 32, Code of Alabama) constitute "invidious discrimination" in

violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States?

(5) Is Act No. 93, Senate Bill 29; commonly referred to as the "67-Senator Amendment," proposing an amendment to the Constitution of Alabama relating to legislative apportionment as passed in the 1962 Special Session of the Legislature for the State of Alabama on July 12, 1962, an unconstitutional proposal within the meaning of the equal protection provisions of the Fourteenth Amendment to the Constitution of the United States?

(6) Should the Court declare invalid a proposed amendment to the Constitution of Alabama which by the act of the Legislature is to be submitted to the people of the state?

(7) Is a "little federal system" in a state legislature constitutional, or must both the senate and house be apportioned strictly according to population?

(8) Is the Act No. 91, House Bill 59, commonly referred to as the "Crawford-Webb Bill," passed in the 1962 Special Session of the Legislature and approved by the Governor of the State of Alabama on July 12, 1962, an unconstitutional Act within the meaning of the equal protection provisions of the Fourteenth Amendment to the Constitution of the United States?

(9) Is Act No. 93, Senate Bill 29 (commonly referred to as the "67-Senator Amendment") and Act No. 91, House Bill 59 (commonly referred to as the "Crawford-Webb Bill,") both having been passed by the 1962 Special Session of the Legislature for the State of Alabama, void, invalid and ineffective to the extent that they attempt to correct the denial of the plaintiffs' rights, said denial arising from the debasement of plaintiffs' votes in violation of the Equal [fol. 413] Protection Clause of the Fourteenth Amendment to the Constitution of the United States?

(10) Was the Court from the evidence in this cause justified in apportioning the Legislature of Alabama by Judicial Decree?

(11) Should the Court have apportioned the Legislature by Judicial Decree on a population basis as provided for

by Sections 199 and 200 of the Constitution of Alabama, 1901?

(12) Did the apportionment of the Legislature by Judicial Decree, deprive the parties who had been nominated in the Democratic Primary for seats in the Legislature of property rights without due process of law as preserved to them under the Fourteenth Amendment to the Constitution of the United States?

(13) Was the apportionment by Judicial Decree in this cause an equitable apportionment of the Legislature of Alabama?

(14) Were the persons who had been nominated in the Democratic Primary for seats in the Alabama Legislature necessary parties to this suit, and did the failure to make them parties in this cause deprive them of property rights preserved to them under the due process clause of the Fourteenth Amendment to the Constitution of the United States?

(15) Does Article IV of the Constitution of the United States prohibit a federal Court from asserting power and authority over a state legislature?

(16) How rapidly should the courts move to remedy legislature malapportionments?

(17) Does the Federal district Court have Constitutional power to reapportion the Legislature of Alabama?

(18) Does the Federal district Court have Constitutional power to give affirmative application to the Fourteenth Amendment to the Constitution of the United States?

(19) Does the Federal district Court have authority to take over the election machinery of the State of Alabama and direct an election to be held contrary to the procedure adopted under the laws of the State of Alabama?

Thomas G. Gayle, 1104½ Water Avenue, Selma, Alabama,

Counsel for B. A. Reynolds, Judge of Probate of Dallas County, Alabama, Defendant-Appellant.

[fol. 414] Joseph E. Wilkinson, Jr., The Peoples Bank & Trust Company Building, Selma, Alabama;

McLean Pitts, City National Bank Building, Selma, Alabama;

Rankin Fite, Hamilton, Alabama,

Counsel for Frank Pearce, Judge of Probate of Marion County, Alabama, Defendant-Appellant.

Certificate of Service (omitted in printing).

[fol. 416]

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

NOTICE OF APPEAL (CROSS APPEAL) OF DAVID J. VANN, ET AL. TO THE SUPREME COURT OF THE UNITED STATES—Filed August 23, 1962

I

Notice is hereby given that David J. Vann and Robert S. Vance, individually and as Chairman and Vice-Chairman, respectively, of the Jefferson County Democratic Campaign Committee, who are intervener plaintiffs in the above-entitled cause, hereby take a separate or cross appeal to the Supreme Court of the United States from the decree made and entered on July 25, 1962, which said de-
[fol. 417] cree declared the present apportionment of the Legislature of Alabama to constitute invidious discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; declared that Acts Nos. 93 and 91, as passed in the 1962 Special Session of the Legislature for the State of Alabama, are unconstitutional within the meaning of the Fourteenth Amendment to the Constitution of the United States; ordered the provisional apportionment of the Legislature of the State of Alabama effective on the day after the general election to be held in November 1962, in ac-

cordance with the provisions of said decree; enjoined and ordered the defendants to take necessary and appropriate actions to put such apportionment into effect; and enjoined and restrained defendants from holding elections except in accordance therewith and from otherwise taking any action to hinder or obstruct the effectuation of such apportionment.

This appeal is taken pursuant to 28 United States Code, Section 1253.

II

The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. All items enumerated in the Notice of Appeal to the Supreme Court of the United States heretofore filed herein on behalf of B. A. Reynolds, Judge of Probate of Dallas County, Alabama, and Frank Pearce, Judge of Probate of Marion County, Alabama.

2. Without limitation of the foregoing, the following are specifically designated for inclusion in said transcript:

(a) Motion for Leave to Intervene heretofore filed herein by the undersigned intervening plaintiffs.

[fol. 418] (b) Motion for Leave to Amend Complaint in Intervention heretofore filed herein by the undersigned intervening plaintiffs.

(c) Joinder in Motion for Summary Judgment heretofore filed herein by the undersigned intervening plaintiffs.

(d) Motion for Rehearing and Modification of Proposed Decree heretofore filed herein by the undersigned intervening plaintiffs.

III

The following questions are presented by this appeal:

1. Did the District Court of three judges err in failing to apportion the Senate of the State of Alabama in a man-

ner which will comply with the requirements of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States?

2. Did the District Court of three judges err in failing to declare that the Fourteenth Amendment of the Constitution of the United States requires the apportionment of seats in the Senate of the State of Alabama as nearly as may be according to population?

3. Under the present distribution of population within the State of Alabama, according to the federal census of 1960, do the provisions of the Constitution of Alabama of 1901, and particularly of Sections 198, 199, 200 and 284 thereof, meet the requirements of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States?

David J. Vann, 2100 Comer Building, Birmingham, Alabama;

Robert S. Vance, 1703 Comer Building, Birmingham, Alabama;

C. H. Erskine Smith, First National Building, Birmingham, Alabama, Attorneys for Intervening Plaintiffs.

[fol. 419] Proof of Service

Certificate of Service (omitted in printing).

[fol. 419a]

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF ALABAMA

NORTHERN DIVISION

Civil Action No. 1744-N

[Title omitted]

NOTICE OF APPEAL (CROSS APPEAL) OF JOHN W. McCONNELL, JR., ET AL. TO THE SUPREME COURT OF THE UNITED STATES

I

Notice Is Hereby Given that John W. McConnell, Jr., Joseph N. Langan, William M. Williams, Jr. and Garet [fol. 419b] Van Antwerp, who are Intervenor Plaintiffs in the above entitled cause, through their attorney of record, hereby take a separate or cross-appeal to the Supreme Court of the United States from the Decree made and entered by this honorable court on July 25, 1962, which said Decree declared the present apportionment of the Legislature of Alabama to constitute invidious discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; declared that Acts No. 91 and 93, as passed in the 1952 Special Session of the Legislature of the State of Alabama, are unconstitutional within the meaning of the Fourteenth Amendment to the Constitution of the United States; ordered the provisional apportionment of the Legislature of the State of Alabama effective on the day after the general election to be held in November, 1962, in accordance with the provisions of said Decree; enjoined and ordered the Defendants to take necessary and appropriate actions to put such apportionment into effect; and enjoined and restrained Defendants from holding elections except in accordance therewith and from otherwise taking any action to hinder or obstruct the effectuation of such apportionment.

This appeal is taken pursuant to 28 United States Code, Section 1253.

II

The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States and include in said transcript all items enumerated in the Notice of Appeal and in the Notice of Appeal (Cross-Appeal) to the Supreme Court of the United States heretofore filed herein on behalf of D. A. Reynolds and Frank Pierce, Appellants, and David J. Vann and Robert S. Vance, Cross-Appellants, respectively.

[fol. 419c]

III

The following questions are presented by this appeal:

1. Is the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution satisfied when representation in either house of a two-house state legislature is based on a factor or factors other than population?

2. Does not the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution require that representation in both houses of a two-house state legislature, i.e., the legislative system as a whole, be based on a reasonable or rational population basis?

3. Does not the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution require that each citizen of a state have equal representation in the legislative process as a whole, i.e., that representation in both houses of a two-house state legislature be based on a reasonable or rational population basis?

John W. McConnell, Jr., 1101 Merchants National Bank Building, Mobile, Alabama, Attorney for Intervening Plaintiffs.

Proof of Service (omitted in printing).

[fol. 424] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 425]

SUPREME COURT OF THE UNITED STATES

Nos. 508, 540 and 610—October Term, 1962

B. A. REYNOLDS, etc., et al., Appellants,

vs.

M. O. SIMS, et al.; DAVID J. VANN and ROBERT S. VANCE, Appellants,

vs.

BETTYE FRINK, Secretary of State of the State of Alabama, et al.; and JOHN W. McCONNELL, JR., et al., Appellants,

vs.

BETTYE FRINK, Secretary of State of Alabama, et al.

Appeals from the United States District Court for the Middle District of Alabama.

ORDER NOTING PROBABLE JURISDICTION—June 10, 1963

The statements of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the cases are consolidated and a total of two hours is allowed for oral argument.